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# IPR Solutions

**E**olas, Rambus, SCO...the very names bring up feelings of consternation or elation, depending on your point of view. Intellectual Property Rights (IPR) remain a tremendous issue in the ICT industry and their impact is increasing. With the recent Eolas ruling, which favored the IP claims of Eolas and the University of California over Microsoft, impacting Microsoft's core products including Internet Explorer and Windows, it is evident that not even the largest companies are immune to the proliferation of patents and lawsuits. If we are lucky, this case may spur industry into a concerted action to address the IPR problem once and for all. If we are not so lucky or do not drive this collaboration, the ICT industry will continue to strain under this severe dynamic tension, always looking back to detect potential lawsuits or hiding its head in the sand to try and avoid them, until plausible solutions are agreed upon.

Can standardization act as a tool to help manage this tension and bring it more into balance? Should governments be involved in setting national or international guidelines on IPR policies in standardization bodies to facilitate this? Should there be a single IPR policy for all standards setting organizations? What happens when an SSO's members adhere

to its IPR policies, only to be undermined by a company outside of the process as in the Eolas case? Is innovation truly served when small companies are barred from entering markets because they can't participate in cross-licensing agreements? Are there other solutions besides RAND and Royalty Free? These are just some of the questions that the mere mention of the term IPR brings to mind; questions that impact the standardization system and that the ICT industry must successfully address if it is to flourish. While many of these issues are beyond the scope of this book, this section does look at IPR choices and strategies from a company and a government perspective, proposing changes and alternative solutions in addition to the more traditional approaches of RAND and Royalty Free.

Companies face a choice in how they manage their intellectual property. The traditional approach has been to protect it at all costs, using it to ensure cross-licensing agreements as well as generate revenues. In this section, Larry Johnson examines conditions in which this strategy can actually prove detrimental to companies and may produce a negative return on investment. Similar to the strategy of "letting go" described in the "Introduction" of this book, releasing certain intellectual property may actually prove

more beneficial to its owners than protecting it.

No article in this book illustrates the concept of dynamic tension stretched too tight more than Tineke Egyedi's article on "IPR Paralysis in Standardization." By citing numerous examples that include GSM and JAVA™, Egyedi argues that compatibility serves the public good at least as well as IPR policies. And standards obviously play a significant role in facilitating compatibility. In fact, DIN found that "From a macroeconomic perspective, it is significant that standards make a greater contribution to economic growth than patents or licences, that export-oriented sectors of industry make use of standards as a strategy in opening up new markets, and that standards help technological change."<sup>1</sup>

Finally, Toru Yamauchi from Japan's Ministry of Economy, Trade, and Industry (METI), who is tasked with creating Japan's IPR policy, discusses the findings of several government reports and looks at possible IPR policy solutions. And Mitsubishi Research Institute, who is working closely with METI, takes a closer look at these reports before providing its own suggestions for IPR solutions.

IPR policies created around the world, whether in standards setting organizations or by governments themselves, will impact innovation, market size and acceptance, and even trade. If industry does not solve this problem, most assuredly government will. Without a solution, the ICT industry risks suffocating itself in a pool of its own lawsuits. With agreed upon solutions, the ICT industry can continue to grow with the confidence and reassurance that its innovations will be allowed to prosper. The best solutions are not directly evident, nor will they be arrived at in a single meeting. However, effort exerted now towards building a solid IPR framework in the information and communications technology industry—even if that effort creates more tension in the short term—will serve to protect the growth of that industry far into the future.

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<sup>1</sup> DIN German Institute for Standardization e.V., April 2000, "Economic Benefits of Standardization: Summary of Results," p. 4.