

Source: CWTS

Title: CWTS IPR Policy (English language version)

Agenda item: 3.1

Document for:

Decision	
Discussion	
Information	X

The Organizational Partners had previously requested sight of the English language version of the CWTS IPR Policy. This has now been provided and is attached for information.

Annex 1:

CWTS Intellectual Property Rights Policy

(English Version is for reference only)

1 Introduction

The General Assembly of CWTS has established the following Intellectual Property Rights POLICY. As an indivisible part of CWTS Constitution, the POLICY has effect on all members.

2 Definitions

Terms in the POLICY which are written in capital letters shall have the meaning set forth in Clause 14 entitled DEFINITIONS.

3 Policy Objectives

- 3.1 The CWTS IPR POLICY seeks to reduce the risk to CWTS, CWTS members, and others applying CWTS STANDARDS, that investment in the preparation, adoption and application of STANDARDS could be wasted as a result of an ESSENTIAL IPR for a STANDARD being unavailable. In achieving this objective, the CWTS IPR POLICY seeks a balance between the needs of standardization for public use in the field of telecommunications and the rights of the owners of IPRs.
 - 3.2 IPR holders whether members of CWTS and their AFFILIATES or THIRD-PARTIES, should be adequately and fairly rewarded for the use of their IPRs in the implementation of STANDARDS..
 - 3.3 CWTS shall take reasonable measures to ensure, as far as possible, that its activities which relate to the preparation, adoption and application of STANDARDS, enable STANDARDS to be available to potential users in accordance with the general principles of standardization.
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4 Disclosure of IPRs

- 4.1 Each member shall use its reasonable endeavours to timely inform CWTS of ESSENTIAL IPRs it becomes aware of. In particular, a member submitting a technical proposal for a STANDARD shall, on a bona fide basis, draw the attention of CWTS to any of that member's IPR which might be ESSENTIAL if that proposal is adopted.
- 4.2 The obligations pursuant to Clause 4.1 above do however not imply any obligation on

members to conduct IPR searches.

5 Procedures for Committees

CWTS shall establish guidelines for the chairmen of COMMITTEES with respect to ESSENTIAL IPRs.

6 Availability of Licences

6.1 When an ESSENTIAL IPR relating to a particular STANDARD is brought to the attention of CWTS, the Chairman of CWTS shall immediately request the owner to give within three months an undertaking in writing that it is prepared to grant irrevocable licences on fair, reasonable and non-discriminatory terms and conditions under such IPR to at least the following extent:

- MANUFACTURE, including the right to make or have made customized components and sub-systems to the licensee's own design for use in MANUFACTURE;
- sell, lease, or otherwise dispose of EQUIPMENT so MANUFACTURED;
- repair, use, or operate EQUIPMENT; and
- use METHODS.

The above undertaking may be made subject to the condition that those who seek licences agree to reciprocate.

6.2 At the request of the Governing Departments, initially for a specific STANDARD or a class of STANDARDS, CWTS shall arrange to have carried out in a competent and timely manner an investigation including an IPR search, with the objective of ascertaining whether IPRs exist or are likely to exist which may be or may become ESSENTIAL to a proposed STANDARD and the possible terms and conditions of licences for such IPRs.

7 Information on IPR by CWTS

7.1 Any STANDARD finished by CWTS shall include information pertaining to ESSENTIAL IPRs which are brought to the attention of CWTS .

7.2 CWTS shall establish appropriate procedures to allow access to information at any time with respect to ESSENTIAL IPRs which have been brought to the attention of CWTS.

8 Non-availability of Licences

8.1 Members' refusal to license

8.1.1 Where a member notifies CWTS that it is not prepared to license an IPR in respect of a STANDARD, the General Assembly shall review the requirement for that STANDARD and satisfy itself that a viable alternative technology is available for the STANDARD which:

- is not blocked by that IPR; and

- satisfies CWTS' requirements.

8.1.2 Where, in the opinion of the General Assembly, no such viable alternative technology exists, work on the STANDARD shall cease, and the Chairman of CWTS shall request in writing that member to reconsider its position. If the member decides not to withdraw its refusal to license the IPR, it shall inform the Chairman of CWTS of its decision and provide a written explanation of its reasons for refusing to license that IPR, within one month of its receipt of the Chairman's request.

The Chairman shall then send the member's explanation together with relevant documents of CWTS to the Governing Departments for their consideration.

8.2 Non-availability of licences from THIRD-PARTIES

Where, in respect of a STANDARD, CWTS becomes aware that licences are not available from a THIRD-PARTY in accordance with Clause 6.1 above, that STANDARD or TECHNICAL SPECIFICATION shall be referred to the Chairman of CWTS for further consideration in accordance with the following procedure:

- i) The Chairman shall request full supporting details from any member who has complained that licences are not available in accordance with Clause 6.1 above.
- ii) The Chairman shall write to the IPR owner concerned for an explanation and request that licences be granted according to Clause 6.1 above.
- iii) Where the IPR owner refuses the Chairman's request or does not answer the letter within three months, the Chairman shall inform the General Assembly. A vote shall be taken in the General Assembly on an individual weighted basis to immediately refer the STANDARD to the relevant COMMITTEE to modify it so that the IPR is no longer ESSENTIAL.
- iv) Where the vote in the General Assembly does not succeed, then the General Assembly shall, where appropriate, consult the Governing Departments with a view to finding a solution to the problem. In parallel, the General Assembly may request appropriate members to use their good offices to find a solution to the problem.
- v) Where (iv) does not lead to a solution, then the General Assembly shall request the relevant authorities to see what further action may be appropriate.

9 CWTS ownership of IPRs

9.1 The General Assembly of CWTS may designate a certain member as the trustee of CWTS owned IPRs.

9.2 The ownership of the copyright in STANDARDS documentation and reports created by CWTS or any of its COMMITTEES shall vest in CWTS but due acknowledgement shall be given to copyrights owned by THIRD-PARTIES that are identifiable in CWTS copyrighted works.

9.3 In respect of IPRs other than copyright in STANDARDS and documentation and reports, CWTS shall only seek ownership of IPRs generated either by its employees or by secondees to CWTS from organizations who are not members. CWTS shall, on request by a non-member, grant licences to that non-member on fair and reasonable terms and conditions in respect of any IPRs, other than those referred to in Clause 9.2 above, owned

by CWTS. Members shall be allowed to use IPRs owned by CWTS free of charge.

10 Non-confidential Information

Non-confidential information, validated by CWTS, shall be opened to public.

Any member should not in any means disclose confidential information to a non-member, Except under the permission of CWTS.

11 Reproduction of Standards Documentation

A member may make copies of STANDARDS documentation produced by the COMMITTEE of CWTS to which this member is belong for its own use free of charge but may not distribute such copies to others, Except under the permission of CWTS.

12 Law and Regulation

The POLICY shall be governed by the laws of People's Republic of China.

13 Violation of Policy

Any violation of the POLICY by a member shall be deemed to be a breach, by that member, of its obligations to CWTS. The CWTS General Assembly shall have the authority to decide the action to be taken, if any, against the member in breach, in accordance with the CWTS Constitution.

14 Definitions

1 **"AFFILIATE"** of a first legal entity means any other legal entity:

- directly or indirectly owning or controlling the first legal entity, or
- under the same direct or indirect ownership or control as the first legal entity, or
- directly or indirectly owned or controlled by the first legal entity,

for so long as such ownership or control lasts.

Ownership or control shall exist through the direct or indirect:

- ownership of more than 50 % of the shares entitling the holders to vote for the election, or
- right by any other means to elect or appoint directors, or persons who collectively can exercise such control. A state, a division of a state or other public entity operating under public law, or any legal entity, linked to the first legal entity solely through a state or any division of a state or other public entity operating under public law, shall be deemed to fall outside the definition of an AFFILIATE.

2 **"COMMITTEE"** shall mean any Technical Body of CWTS.

3 **"CONFIDENTIAL INFORMATION"** shall mean all information deemed to be confidential pursuant to Clause 10 of the POLICY disclosed directly or indirectly to the MEMBER.

4 **"EQUIPMENT"** shall mean any system, or device fully conforming to a STANDARD.

5 **"METHODS"** shall mean any method or operation fully conforming to a STANDARD.

6 **"ESSENTIAL"** as applied to IPR means that it is not possible on technical (but not commercial) grounds, taking into account normal technical practice and the state of the art generally available at the time of standardization, to make, sell, lease, otherwise dispose of, repair, use or operate EQUIPMENT or METHODS which comply with a STANDARD without infringing that IPR. For the avoidance of doubt in exceptional cases where a STANDARD can only be implemented by technical solutions, all of which are infringements of IPRs, all such IPRs shall be considered ESSENTIAL.

7 **"IPR"** shall mean any intellectual property right conferred by statute law including applications therefor other than trademarks. For the avoidance of doubt rights relating to get-up, confidential information, trade secrets or the like are excluded from the definition of IPR.

8 **"MANUFACTURE"**, shall mean production of EQUIPMENT.

9 **"POLICY"** shall mean CWTS' Intellectual Property Rights Policy.

- 10** "STANDARD" shall mean any standard adopted by CWTS including options therein or amended versions and shall include Chinese Standards (telecommunications series), CWTS Specifications, Technical Reports and including drafts of any of the foregoing.
- 11** "THIRD-PARTY" means any legal entity other than CWTS, CWTS members and their AFFILIATES.