From: Blumenthal, Uri - 0553 - MITLL <uri@ll.mit.edu> via pqc-forum@list.nist.gov
To: Paul Hoffman <paul.hoffman@icann.org>
CC: pqc-forum@list.nist.gov
Subject: Re: [Ext] [pqc-forum] RE: Announcement: The End of the 3rd Round - the First PQC Algorithms to be Standardized
Date: Thursday, August 11, 2022 11:06:43 AM ET
Attachments: smime.p7m

Paul,

Could you please clarify

Regards,
Uri

> On Aug 11, 2022, at 10:54, Paul Hoffman <paul.hoffman@icann.org> wrote:
>
> Even licenses that say "if you use this patent, you can't sue me for my use of your patents" fails spectacularly across national boundaries.

I don’t fully understand this part. It send perfectly natural to me for an IPR holder to say “you may use my IPR for free (maybe, only with the context of this given standard). But in that case, you will not sue me for use of your IPR (within the context of this standard).

> If any patent holders for any PQC algorithm hope to get anything other than good will because they gave up the patent to free use everywhere, they are badly deluded. Worse, they are hurting the users of the Internet by delaying the timely uptake of PQC.

Please explain. If a patent holder gave up patent for free use, what can she possibly hope or think to get, besides good will?

> --
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From: Greg Maxwell <gmaxwell@gmail.com> via pqc-forum@list.nist.gov
To: Blumenthal, Uri - 0553 - MITLL <uri@ll.mit.edu>
CC: Paul Hoffman <paul.hoffman@icann.org>, pqc-forum@list.nist.gov
Subject: Re: [Ext] [pqc-forum] RE: Announcement: The End of the 3rd Round - the First PQC Algorithms to be Standardized
Date: Thursday, August 11, 2022 11:32:56 AM ET

On Thu, Aug 11, 2022 at 3:06 PM Blumenthal, Uri - 0553 - MITLL
<uri@ll.mit.edu> wrote:
> I don’t fully understand this part. It send perfectly natural to me for an IPR holder to say “you may use my IPR for free (maybe, only with the context of this given standard). But in that case, you will not sue me for use of your IPR (within the context of this standard).

In addition to the points Paul raises, companies have attempted far more ... ambitious ... disarmament clauses than the equitable one you're imagining. For example, instead of requiring mutual non-enforcement over a particular standard I'm thinking of one I saw proposed where they attempted to require the licensee release the licensor of *any* legal cause of action, not limited to patents, not limited to a specific standard, not even limited to a specific timeframe. Just 'if you use this you are completely legally disarmed towards the licensor and their successors in interest or otherwise you don't get to use the patents'.

So the specific terms matter *greatly*. Absent firm and well informed guidance your standard corporate attorney will usually write terms which would be unacceptable for use with a public protocol standard, because that's the norm for contract drafting: most of the time contracts are either negotiated through a quasi-adversarial process or they are so one sided that the recipient doesn't get a meaningful choice regardless (like a TOS) and in either case you generally ask for everything you could imagine wanting at least until the other side tells you no.

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From: Blumenthal, Uri - 0553 - MITLL <uri@ll.mit.edu> via pqc-forum@list.nist.gov
To: Greg Maxwell <gmaxwell@gmail.com>
CC: Paul Hoffman <paul.hoffman@icann.org>, pqc-forum@list.nist.gov
Subject: Re: [Ext] [pqc-forum] RE: Announcement: The End of the 3rd Round - the First PQC Algorithms to be Standardized
Date: Thursday, August 11, 2022 02:27:31 PM ET
Attachments: smime.p7m

> > I don’t fully understand this part. It seems perfectly natural to me
> > for an IPR holder to say “you may use my IPR for free (maybe, only
> > with the context of this given standard). But in that case, you will
> > not sue me for use of your IPR (within the context of this standard).
>
> In addition to the points Paul raises, companies have attempted far
> more ... ambitious ... disarmament clauses than the equitable one
> you're imagining. For example, instead of requiring mutual
> non-enforcement over a particular standard I'm thinking of one I saw
> proposed where they attempted to require the licensee release the
> licensor of *any* legal cause of action, not limited to patents, not
> limited to a specific standard, not even limited to a specific
> timeframe.

IMHO, those "more ambitious" would just fall outside of the acceptable spectrum, and should be considered as if the IPR holder wanted to charge money.

So, again - I don't see why we (IETF) cannot agree to require and accept a clear statement, basically expressing in legalese something like (let lawyers refine it):

  I, the IPR holder <on behalf of company X>, allow free unlimited use of this IPR within
  the context of this standard, on condition that others who hold IPR within the context
  of this standard, will allow me (<company X>) unlimited use of their IPR within the
  context of this standard.

I did not understand the points Paul was rising, because, obviously, for somebody's IPR release to be taken seriously, that somebody must be authorized to speak on behalf of the entity that owns/holds that IPR. So, for example, it cannot be, e.g., one division of a company, while another division claims rights to the same IPR and demands totally different terms for its use.

Some of the Paul's concerns:

- Who is "you" in the case of a company with subdivisions that seem to be both part of the company and independent?

IMHO, the same IPR cannot simultaneously belong to different legal entities. There either is somebody who is authorized to speak and commit on behalf of the legal entity holding IPR, or there's nothing to talk about.

- Who is "you" in the case of a country? Does it apply to contractors writing software for that country?

I've no idea. I assume that if a legal entity holds an IPR in more than one country, that whatever that entity states regarding licensing that IPR (for free, for a fee, whatever), would hold in all of those countries. Lawyers can correct me.

- What if the patent holder is acquired by a different company, and you are already actively suing that company for an obvious misuse of your patent?

I would imagine that legal agreements made by a company must stay valid after acquisitions/mergers.
Otherwise, what's to stop a company from buying another one and say "all the loans, pension funds, etc. that the company I bought, are now null and void - I did not take those obligations and refuse to honor them now"?
Somebody with expertise in the Law, please step in and elucidate.

> So the specific terms matter *greatly*. Absent firm and well informed
> guidance your standard corporate attorney will usually write terms
> which would be unacceptable for use with a public protocol standard,
> because that's the norm for contract drafting. . .

But the IETF does not have to accept those "standard" drafts, and can clearly define what such a release form must state in order to be considered.

TNX

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