



The Standards People



# Legal Considerations

Presented by: **Sonia Guedda**

For: **ETSI Seminar**

20 May 2021

# Legal considerations

---

- ✔ ETSI is a not-for-profit organization registered under the French Law of 1<sup>st</sup> July 1901
  - ✔ ETSI and ETSI Directives are governed by French and/or EU law
  
- ✔ Several legal considerations need to be taken into account while participating in the activities of ETSI
  - ✔ When an entity becomes an ETSI Member, it is contractually bound by the ETSI Directives

## Focus in this Seminar:

- ✔ I. ETSI IPR Policy
- ✔ II. ETSI Guidelines for Antitrust Compliance



# I. ETSI IPR Policy

# What is the ETSI IPR Policy ?

---

## The ETSI IPR Policy (Annex 6 of the ETSI Rules of Procedure)

- ✔ Established by the GA
- ✔ Rights and obligations with respect to essential IPRs
- ✔ Definitions
- ✔ IPR Licensing Declaration forms (Appendix A) : Obsolete from 14 April 2021 (D-GA77/24 {SCM})

<http://www.etsi.org/images/files/IPR/etsi-ipr-policy.pdf>

## The ETSI Guide on IPRs

- ✔ Endorsed by the Board but does not have the same official status as the Statutes, the RoP or the TWP
- ✔ Background/ Guidance on the interpretation of the rights and obligations deriving from the IPR Policy
- ✔ Does not replace the IPR Policy which takes precedence in all cases

<http://www.etsi.org/images/files/IPR/etsi-guide-on-ipr.pdf>

# Tension

---

## Inherent tense relationship between IPRs and Standards

- ✔ Standards are intended for collective use
- ✔ IPRs are destined for private, exclusive use, except if licensed

Tension may lead to conflicts whenever the technical content of a standard falls within the scope of an IPR

- ✔ Essential IPR or Standard Essential Patent (SEP) = IPR which is necessarily required for the implementation of a standard and for which a licence is needed for not being an infringer

# Challenge

---

Solve the tension between SEPs and standards by striking the proper balance between all the different interests involved

Interests involved:

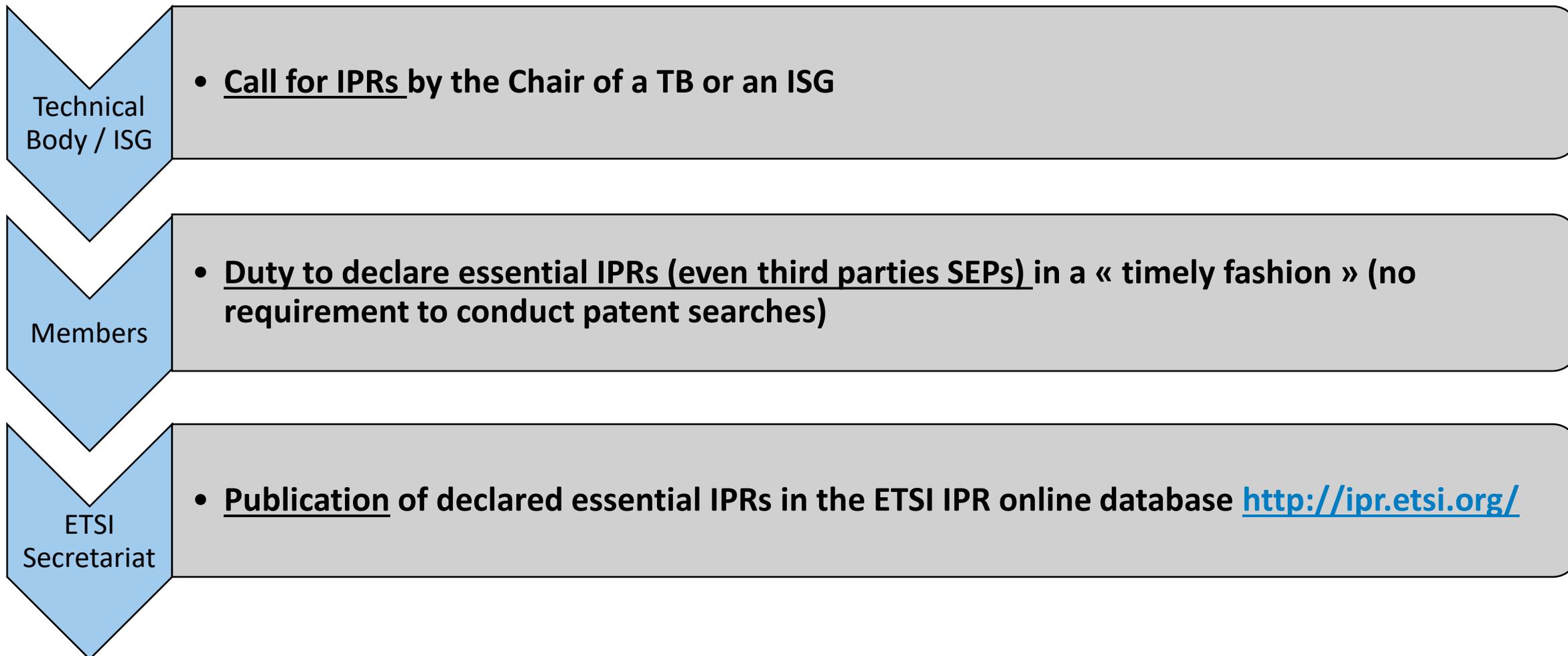
- ✔ SEP owners: wish to be fairly rewarded for the use of their SEPs
- ✔ implementers: wish to make and sell standard compliant products under reasonable conditions
- ✔ public use/end-users: seek the widest possible choice among affordable and interoperable products
- ✔ SDO: avoid wasting effort on the elaboration of a deliverable which could subsequently be blocked by an SEP

## Purpose and Main Characteristics

---

- ✓ Focus on the most suitable technology
- ✓ Timely identification and disclosure of SEPs
- ✓ Ensure the complete applicability of standards achieving a balance between the needs of implementers and the rights of SEP owners
  
- ✓ No involvement of ETSI in
  - ✓ (i) any commercial discussion on IPR matters (i.e. terms and conditions of the licences to be determined by the parties of the agreement only) and in
  - ✓ (ii) the assessment of the validity and essentiality of patents declared as SEPs

# Timely Identification & Declaration of SEPs



## Example chairman's call for IPRs

---

The attention of the members of this Technical Body is drawn to the fact that ETSI Members shall use reasonable endeavours under Clause 4.1 of the ETSI IPR Policy, Annex 6 of the Rules of Procedure, to inform ETSI of Essential IPRs in a timely fashion. This section covers the obligation to notify its own IPRs but also other companies' IPRs.

The members take note that they are hereby invited:

- ✓ to investigate in their company whether their company does own IPRs which are, or are likely to become Essential in respect of the work of the Technical Body,
- ✓ to notify to the Chairman or to the ETSI Director-General all potential IPRs that their company may own, by means of the IPR Information Statement and the Licensing Declaration forms that they can obtain from the ETSI Technical Officer or <http://www.etsi.org/WebSite/document/Legal/IPRforms.doc>

Members are encouraged to make general IPR undertakings/declarations that they will make licenses available for all their IPRs under FRAND terms and conditions related to a specific standardization area and then, as soon as feasible, provide (or refine) detailed disclosures.

# FRAND Undertaking

---

FRAND = Fair, Reasonable And Non-Discriminatory – no further definition provided by ETSI

- ✔ ETSI requests SEP owner to give an irrevocable undertaking that it is prepared to grant irrevocable licences under FRAND T&Cs
- ✔ T&Cs of the licences to be determined by the parties of the agreement and outside ETSI
- ✔ FRAND undertaking binding on the transferee in case of transfer of ownership of the SEP (Article 6.1 bis of the ETSI IPR Policy)
- ✔ SEP owner may give or refuse FRAND licensing undertaking
- ✔ ETSI has a clearly defined procedure in case of non-availability of FRAND licences (Article 8 of the ETSI IPR Policy)

## Conclusions on the IPR Policy

---

The ETSI IPR Policy is fairly balancing all the interests involved

The ETSI IPR Policy is one of the key elements for the success of ETSI's globally-applicable standards

- ✔ allowing Members to fully reserve their IPRs is beneficial to the drafting of excellent and high-quality standards
- ✔ incentive for high technology companies to participate in the standardization process

ETSI will continue to lead the debate on IPRs and Standards

## II. ETSI Guidelines for Antitrust Compliance

# Guidelines for Antitrust Compliance

---

## What is competition law?

- ✔ It ensures that competition in the market is not distorted and that markets operate as efficiently as possible
- ✔ It ultimately safeguards the welfare of consumers
- ✔ It covers different areas, including rules on restrictive agreements (i.e. agreements that restrict competition), concerted practices, abuses of dominant position, merger control, etc...

## What are the possible implications for ETSI and its Members?

- ✔ ETSI - as an association of competitors - and their members are subject to the application of principles of competition law in their standardization activities
- ✔ Competition authorities can impose significant fines with regards to anticompetitive behaviours
- ✔ Beyond monetary sanctions, anticompetitive behaviours can affect reputation

# Guidelines for Antitrust Compliance

---

How to avoid anti-competitive behaviour in ETSI?

- ✔ Read the ETSI Guidelines for Antitrust Compliance and comply with them:  
<http://www.etsi.org/images/files/IPR/etsi%20guidelines%20for%20antitrust%20compliance.pdf>
- ✔ In case of doubt, the assistance of a legal counsel shall be sought