IETF Trust Retreat

15 – 16 April, 2009

Cisco Systems

13600 Dulles Technology Drive

Herndon, Virginia 20171

Participants:

Lynn St. Amour   [Present]

Fred Baker   [Present]

Marshall Eubanks   [Present; Chair]

Bob Hinden   [Present]

Russ Housley   [Present]

Ole Jacobsen   [Present]

Olaf Kolkman   [Present]

Ray Pelletier   [Present]

Henk Uijterwaal   [Present]

Jorge Contreras   [Guest; Counsel to the IETF Trust]

Greg Kapfer   [Guest; ISOC CFO]

Agenda for the IETF Trust Meeting, 15-16 April, 2009

1. Microsoft Intellectual Property License

2. Use of Microsoft Intellectual Property License Form as a Template Online

3. Standard IP License Template.

4. Effectiveness of the 10 November 5378 Publication Date

5. Joint Work Copyright

6. Update of Code Components

7. Fair Use

8. Copyright

9. Subpoenas

The IETF Trust meeting opened with a call to order by the Chair and a roll call.

1. Microsoft Intellectual Property License

The Counsel to the Trust discussed Microsoft's intellectual property license offer. On the basis of reviews of several license models, a note will go out from the Trust to Microsoft stating that the IETF would like to thank Microsoft for their intellectual property license offer and accepts it. The IETF secretariat has been registered to the Trust; the diamonds with squiggly lines is a registered trademark in the states. The diamonds design came up in '94 or '95 and Ole Jacobsen was credited alongside another person; but the Trust is the registered holder. Henk asked if there's cost involved in keeping the registration – the answer is yes, and you're not allowed to permit registrations to lapse.

2. Use of Microsoft Intellectual Property License Form as a Template Online

Policing/licensing – another duty of Trust is to police the marks (i.e. looking out for people using the marks in the wrong way or abusing the marks). The people who organized the Facebook and Linked-In pages have been given a 1-page license agreement (see list from slide). It was noted that every now and then we come across a group using the logo and a decision has to be made because if you let some folks use it without a license, you lose.

The IRTF may require a more substantial license because they have a variant of the diamond logo that they use – there's some sensitivity around that, but it should be trademarked and licensed. The IETF does not have the IRTF domain name and the IESG and IAB domain names but some would argue they never had the rights to give.

The Chair mentioned that the rights that were transferred were not enumerated by the quick claim deed; there's a list and a catch all too. It's IESG, IAEB, but the logo and all the domain names.

Earlier this morning the IANA protocol parameters were discussed. The question of what if they were related to the Trust was brought up. What are the things the IETF can and cannot do with those? Does the IETF need to license the use of those parameters? What are the tasks involved if that were to happen? The Counsel to the Trust asked what IANA does with them anyway? They're data, not copyrighted work, but no one ever assumed copyright. A webpage with all the assignments is still a table, but in a different environment the data is in the abstract (under US law, data isn't protected).

Olaf noted that because this is data, it's not copyrightable so we don't have to give it to the Trust. Someone else can maintain it, but you don't need to license it to anyone to use it similar to a telephone directory with a lookup table or an area code lookup. It would be a nightmare to have that as a copyrightable asset in the Trust. It would be like another tool like the IETF tracker. He asked if the data itself doesn't have any copyright associations.

Marshall said that that didn't sound like data. For example, if you count the number of cars in the parking lot I can't copy right that number; so phone lists and lists of names can't be copyrighted, but the representation of such a list may be copyrightable. Some people add fake data to make tables copyrightable such as a map with a fake town. With these examples the protocols are not copyrightable. Olaf replied that the list databases are tricky because in Europe there are protections because there's personal information in there. We don't know if IANA assumes the copyright.

Trust Counsel noted that it can be copyrighted and not marked because the mark isn't required anymore. A question what brought up of what if they put

up mirroring and make that data available as a mirror in cooperation with IANA? Trust Counsel said it shouldn't be done without an agreement with IANA, with a notice that says 'you can't copy this without IETF's permission'. That would be the suggestion if the IETF mirrored the data on the IANA site. It's a 'just-in-case' scenario – there's no draw back to it. You can substitute this contractual constriction for copyright. For example, you can't take Yahoo's stock data and put it on your site because they have a user agreement on their site. You can use something like that on the IETF site if you want to have some parameters around it.

Lynn asked if there's anything the Trustees want to take away from, this like are we expecting Trust Counsel to do some work on this. She would like it to be something that the IAB owns for purposes of that discussion and she's hearing that there's nothing for the IETF Trust to follow and nothing for Jorge to follow.

The Trust has to think of some way to deal with the actual assignments and what their names are: software, the different types the Trust owns, work for hire, the preexisting works the secretariat brought, the volunteer developments, and the Trust outbound code licensing.

Copyright topics

Copyright notice in code: there has been a lot of traffic on this topic. Jorge says RFC 3978 did allow code extracts for the first time from RFCs and allowed a pointer into MIB/PIB models that made its way (see slide for details). Here's the issue: when someone takes code out of an RFC and wants to use it in a program in an executable mode they're supposed to use the 15 lines of the BSD somewhere in the comment section of the code. Some people think that's a problem because it's more than 2.

Russ noted that the bottom line is the IETF did a couple thing wrong. We can't go to the PDF because it has non-ASCII characters. It isn't easy for a person to do without messing it up. There are also indents that are important. We did a bunch of mechanical things that make it hard. Yahoo and others say if you take this text you have to put the 15 lines, or whatever, on it. Can't we do something similar with a 2-liner that says when you import code from this document you must put the 15 lines in it so that there's a notice (so we don't have to have the 15 lines in every module)? Module is a relative term though.

Marshall replied that there's a question of what's in the RFC and what's the in the code because Russ only cares what needs to go in the code. The notice we put in an RFC now doesn't say anywhere that there are different rules for code. Trust Counsel noted that there's no guidance in the RFC. If you put in

a pointer that says if you extract code go to 'this' and insert the 'legend'' then that works, but to make this happen there has to be an interface with the RFC Editor.

The questions were asked: what language do we actually want to appear in the document. What is the pragmatic answer that will make this thing stop 'it' because we're blocking 4 RFCs right now? Trust Counsel suggested that the proposal is that if you extract code from this RFC then you must include the language described in the section above. All code components in this document are licensed under TLP section such and such, and add the sentence about copying.

Action item: come up with a legend. Trust Counsel would stick with the second part: "Code components extracted from this document must include the license set forth in section 4.c of the Trust legal provisions." Where this sentence goes will be determined by the RFC Editor and it should go in every document. This issue will be resolved on April 23 during the Trust call. And it has to be articulated; Russ is working on the statement.

The IAD asked where the authority for using the line is. Is it just part of a statement? How do we make sure it gets into every RFC draft? Trust Counsel said there are some things the RFC Editor just does. There is no enforcement of this, it's strictly a notice and is just informative. It is required for this to be documented some place, but it doesn't matter when the language is used.

The Editor is waiting on a statement, and Trust Counsel noted that there's already a statement that's been in use and we're just substituting the language that says when you put a MIBs put the copyright year and RFC. You could put it with the other legends; there are certainly places it could go (such as in 6b). That's where all the legends live. You may have to move around the *6* paragraphs, which will be discussed. It should be in some legend that applies to everything and is fairly broad. 6b is the problem. The Trust copyright notices don't go in IDs. When Harold submits an ID, it's his work and his company didn't have anything to do with it and there really is no justification for the company to claim something that someone contributes or submits. These rules don't apply to the IRTF. Some authors have chosen to give it, but we haven't mandated it until now. It might be that the A and B paragraphs are in conflict. Trust Counsel says it used to be that you used to have to submit A, B and C.

We can vote that it's ready for comment, but it needs to go to the Community. The IAD noted that this will come to the Trust on the 23rd because you have to wait 30 days and the IETF also has to go over the half dozen other things that Trust Counsel wants to present. It was suggested that the IETF go through the rest and revisit this issue at the end.

Trust Counsel reminded everyone that there was also discussion about the code list – anything can be code. The list is illustrative but there is a desire to update the list now and again when asked, and there is not a formal process to update the list. Marshall will send an email to the Trust and that's formal enough; so there are two things that have been requested to be put on the list PIBs and yang [?]. Marshall says our role is to filter out bogus stuff. If it conceivably looks like code then add it on there.

It was noted that the IETF needs to send a notice to the Community saying 'if you want to add something to this list…" A notice like this should be added to the bottom of the list. The Chair will send an email to the IAD to add it.

After discussion, a motion to thank Microsoft for the intellectual property license and accept it was made by the Chair. The motion was seconded by Russ. A roll call vote was made by the Chair.

Lynn St. Amour   [Aye]

Fred Baker   [Aye]

Russ Housley   [Aye]

Olaf Kolkman   [Aye]

Marshall Eubanks   [Aye]

Ole Jacobsen   [Aye]

Henk Uijterwaal   [Aye]

Bob Hinden   [Aye]

Ray Pelletier   [Aye]

The motion carried.

Resolved: That the Trustees will thank Microsoft for the intellectual property license and accept it.

2. Use of Microsoft Intellectual Property License Form as a Template Online

On the basis of reviews of several form models, a motion to thank and accept Microsoft's intellectual property license template as an acceptable online license template was made by the Chair. The motion was seconded by Russ and the motion was put to a roll call vote.

Lynn St. Amour   [Aye]

Fred Baker   [Aye]

Russ Housley   [Aye]

Olaf Kolkman   [Aye]

Marshall Eubanks   [Aye]

Ole Jacobsen   [Aye]

Henk Uijterwaal   [Aye]

Bob Hinden   [Aye]

Ray Pelletier   [Aye]

Resolved: That the Trustees will thank and accept Microsoft's intellectual property license as an acceptable online license template.

The motion carried.

3. Standard IP License Template.

After brief discussion, a motion requesting counsel to review and create a standard IP license template was made by the Chair. The motion was seconded by Russ, and was then put to a roll call vote.

Lynn St. Amour   [Aye]

Fred Baker   [Aye]

Russ Housley   [Aye]

Olaf Kolkman   [Aye]

Marshall Eubanks   [Aye]

Ole Jacobsen   [Aye]

Henk Uijterwaal   [Aye]

Bob Hinden   [Aye]

Ray Pelletier   [Aye]

Resolved: That Trust Counsel will review and create a standard IP license template.

The motion carried.

4. Effectiveness of the 10 November 5378 Publication Date

The IETF Trust discussed and considered the date and effectiveness of the 10 November 5378 publication, and it was agreed that it was appropriate.

Trust Counsel noted that there was not a consensus on anything coming out of the room at the end of the day, and John Klensin posted a BoF informal poll, which only got five responses that agreed with him that nothing should be done, which would mean that if he's right that the desire is not to adopt some kind of duty on the authors then you're left with a temporary workaround, which is a sensible resolution. Ed Juskevicius was very careful in all his announcements to say that it's temporary, which gives us a lot of flexibility because if issues arise within the year then we can tweak it; we're not hurting or blocking anything by keeping it temporary.

The IAD asked if the IETF is going to do this mass solicitation to create an online license registration, or is it just going to be that when someone comes in and requests a license that we can provide this form to them – and that scenario is going to be a 1 in a 1000 event. It seems that there is a consensus that that's what we will have to do; and that the form can be adjusted as needed. Trust Counsel and the IAD need to look at the document if it's going to be a permanent fix and see what may be needed.

A motion to approve the date and effectiveness of 10 November for the RFC 5378 publication was made by the Chair. The motion was seconded by Russ and the motion was put to a roll call vote.

Lynn St. Amour   [Aye]

Fred Baker   [Aye]

Russ Housley   [Aye]

Olaf Kolkman   [Aye]

Marshall Eubanks   [Aye]

Ole Jacobsen   [Aye]

Henk Uijterwaal   [Aye]

Bob Hinden   [Aye]

Ray Pelletier   [Aye]

Resolved: That the Trustees approve the date and effectiveness of 10 November for the RFC 5378 publication.

The motion carried.

5. Joint Work Copyright

The Trustees briefly discussed joint work copyright legal matters with counsel.

A motion to continue discussion of this topic on the following IETF Trust call was made by the Chair. The motion was seconded by Russ and the motion was put to a roll call vote.

Lynn St. Amour   [Aye]

Fred Baker   [Aye]

Russ Housley   [Aye]

Olaf Kolkman   [Aye]

Marshall Eubanks   [Aye]

Ole Jacobsen   [Aye]

Henk Uijterwaal   [Aye]

Bob Hinden   [Aye]

Ray Pelletier   [Aye]

Resolved: That the Trustees would discuss this topic on the following
Thursday conference call.

The motion carried.

6. Update of Code Components

The IETF Trust considered the list of code components and how to update that
decided the way of updating that is that member of the Community should to
send an email to the Trust and the Trust would consider the request.

A motion to consider updating the code components discussing the issue the
following Thursday was made by the Chair. The motion was seconded by Russ and
was put to a roll call vote.

Lynn St. Amour   [Aye]

Fred Baker   [Aye]

Russ Housley   [Aye]

Olaf Kolkman   [Aye]

Marshall Eubanks [Aye]

Ole Jacobsen   [Aye]

Henk Uijterwaal   [Aye]

Bob Hinden   [Aye]

Ray Pelletier   [Aye]

Resolved: That the trustees would consider updating the code components and
would consider discussions of the issue the following Thursday.

The motion carried.

7. Fair Use

The IETF Trust briefly discussed the Fair Use of a copyrighted work. Trust Counsel noted that some use of copyrighted work gets the IETF into a lot of arguments. Fair Use usually involves some sort of transformative use like parody. For example, education is covered by Fair Use.

8. Copyright

The IETF Trust discussed copyright and Trust Counsel examined public domain: there is a set of RFC and IETF documents that are in the public domain because they were either authored by government employees and they can't publish them; Counsel has been asked by people whether they can publish a list of things they think are in the public domain. – Yari may already be able to find that out. Counsel asked if this would be of value to the public because there are no copyrights on them, so the public can use them however they'd like. It may be of value, but not something that shouldn't be brought up until someone challenges something specific.

9. Subpoenas

The IETF Trust discussed the attorney-client privilege question with Trust Counsel would spent a few minutes on what it means when an attorney's communications with a client is "privileged", and when (and what) communications can and cannot be discovered during litigation. 'Client' can include the Trustees, the IESG, and the IAD. He can give advice and tell you what's risky and what isn't. So, if Counsel told you something is risky and you did it anyway, and you act in a violation of a particular law, then in order to keep a piece of information or a communication privileged, you can't disclose it outside the context of IETF, because you're still representing the IETF. If you went and told other people about that particular privileged piece of information, or that communication, then the attorney/client privilege would be lost on the group and your action would be in violation. An example would be if you announced the privileged communication during your plenary or posted the communication in the notes of a meeting, or in meeting minutes, or on the web, then the privilege would be waived. Counsel prefers that any advice given not be disclosed because it can be exploited, and because some people are constantly threatening the IETF with litigation.

It was asked if the attorney/client privilege in a Trustee's own defense. Counsel said yes, because the Trustees are the beneficiaries of the privilege. But if Counsel told a Trustee that 'such and such' is a violation and you did it anyway, that advice still can't be discovered. In terms of

emails, it depends on the topic. Any advice that Counsel gives in an email or gives you orally is privileged. Counsel always tries to use the marker at the top of every piece of communication.

It was asked what the Trustees should do subpoenaed for emails. Counsel would decide what to turn over via a 'privileged' log, and then that information is what is handed over. Reviewing the log would be a good source to give people a sense of what would be giving ammo to others. A procedure does exist for when a subpoena is received. The Trustees will review those procedures and talk about some subpoenas that have been served on the IETF. Some subpoenas that have been served were for attendance lists, IPR Policies, records of standard evolution, as well as documents showing which parties were involved.

Some subpoenas we have received include: Huawei v. Cisco (2003), Foundry Networks v. Lucent (2005), Fenner Investments v. Juniper (2005), Connectel v. Cisco (2006), Akamai v. Limelight (2007), Microsoft v. Alcatel-Lucent (2008), and UTStarcom v. Starent Networks (2008/09).

A motion to adjourn the IETF Trust meeting was made by the Chair. Hearing no objections, the IETF Trust Meeting adjourned at 4:45 PM.