

**TELECOMMUNICATION  
STANDARDIZATION SECTOR****TD 266Rev1**

TSB DIRECTOR'S AD HOC GROUP ON IPR

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Virtual, 7 December 2021

**TD**

**Source:** Rapporteurs of the IPR AHG

**Title:** Report of the meeting of the TSB Director's Ad Hoc Group on Intellectual Property Rights ("IPR AHG"), 7 December 2021(virtual)

Note: For completeness, this meeting report includes the results from the TSAG special session on IPR matters as already reported in [TSAG-TD-1165](#). The report was also presented to TSAG on 10 January 2022 as [TSAG-TD-1251](#). [Revision 1 of the report reflects the comments made by Russia after the meeting.](#)

**Introduction**

The first plenary meeting of TSAG, which took place on 25 October 2021, created an ad hoc group that would address the proposal to modify the IPR section on the covers of A-series Recommendations as described in [TSAG-C-195](#), as well as the proposal of modification of the ITU Marks Guidelines as contained in [TSAG-C-197](#).

The meeting took place on Tuesday 26 October 2021, 16h30-17h30, and was chaired by Mr Serge Raes (Orange) for the issue on the IPR section, and by Mr Hung Ling (Nokia) for the Marks Guidelines. [TSAG-TD-GEN-1165](#) reflects the conclusions of this meeting.

Subsequently, a special meeting (conducted virtually) of the TSB Director's Ad Hoc Group on IPR matters (IPR AHG) was organized on 7 December 2021, 16h-18h CET, to allow members of the IPR AHG to weigh in on the two above-mentioned contributions from the Russian Federation, as the expertise on IPR issues resides in the IPR AHG. The agenda of this session is contained in [IPR-TD 264](#), and the session was again managed in similar fashion to the TSAG ad hoc session on IPR matters. This TD provides the background and reflects the conclusions of the IPR AHG virtual meeting.

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## Discussion and Conclusions

### 1. IPR section as described in TSAG Contribution [TSAG-C-195](#)

#### 1.1 Ad Hoc session on 26 October 2021

Chaired by Mr Serge Raes (Orange), rapporteur for patents issues of the TSB Director's AHG on IPRs.

The proposal to remove the boilerplate on Intellectual Property Rights at the bottom of the first page in the A-series of Recommendations, as shown on page 5 of Contribution [TSAG-C-195](#), or in its entirety, as suggested during the meeting, was discussed during the first half of the meeting.

It was recalled that TSAG has no authority to change this boilerplate, which is found in Resolution 1, and that it can only be amended by WTSA.

Several of the about 95 meeting participants acknowledged that there is strictly speaking no need to have the boilerplate on Intellectual Property Rights (IPR boilerplate) in the covers of the A-series Recommendations because working methods and processes are not subject to technical patents rights. Two options were discussed:

**Option 1:** Status quo – no change to the current text.

**Option 2:** Removal of the entire IPR boilerplate or adoption of a revised template for the A-series – This would require a change to Resolution 1.

Concern was expressed that the removal of the IPR section from the covers of the A-series Recommendations could propagate to other series, and that could create unexpected difficulties.

To conclude, there was no consensus on the proposal.

#### 1.2 IPR Ad Hoc Group meeting on 7 December 2021

The IPR AHG meeting on 7 December 2021 was chaired in turn by Mr Serge Raes (Orange), Rapporteur on patents issues, and Mr Hung Ling (Nokia), Rapporteur on marks issues.

Mr Serge Raes chaired the first half of the meeting and started the meeting at 16h04 with the usual welcome greetings, adoption of the Agenda ([IPR-TD-264](#)), and background introduction ([IPR-TD-265](#)). He reminded all participants that the IPR AHG is composed of an international panel of experts in IPR matters and provides advice to the TSB Director on IPR issues – principally on patents copyrights and marks – related to the ITU-T standardization activities, and for which the corresponding Guidelines for technical experts are available and maintained.

The Chair then outlined the methodology for handling the two TSAG Contributions from the Russian Federation [TSAG-C-195](#) and [TSAG-C-197](#), which are authored by Mr Dmitry Cherkesov, as follows:

1. Summary introduction based on the TSAG ad hoc session report in [TSAG-TD-GEN-1165](#);
2. Presentation by the author, Mr Dmitry Cherkesov;
3. Clarifications followed by discussions; and finally
4. Conclusions.

The Chair started with [TSAG-C-195](#), with focus on the IPR-related issue on page 5.

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### Figure 1 – Snapshot from page 5 of TSAG-C-195 reflecting the IPR-related issue

After Mr Dmitry Cherkosov presented his contribution, it was observed that the proposal on page 5 of TSAG-C-195 creates a redundancy with the customary copyright sentence at the very bottom of that page. Therefore, the sentence proposed to replace the entire IPR boilerplate should be removed for consistency with all the Recommendations.

The remaining part of Option 2, according to the report [TSAG-TD-GEN-1165](#), was to delete the entire IPR boilerplate.

This was opposed by all the regular participants to the IPR Ad Hoc Group for the following non-exhaustive list of reasons:

- The IPR boilerplate is neither limited to patent rights, nor to technical patents in particular. It covers all sorts of patent rights (including e.g. business method or utility model patents, where appropriate), copyrights and any other intellectual property rights, the use of which would need a permission or a license, whether for a fee or for free. The use of software tools during the standards development phase or afterwards (e.g. for testing purposes) was cited as an example;
- The IPR boilerplate is a notification (!attention!) intended to remind practitioners and implementers that appropriate permission or licenses **may be** required - or not. This depends on the circumstances;
- The IPR boilerplate is not trying to protect the ITU against claims of infringement, because the ITU is a specialized Agency of the United Nations Organization and enjoys immunity;
- The IPR boilerplate permits the ITU to take distance (i.e. no position) with any claimed intellectual property rights regarding evidence, validity or applicability, whether from inside the Membership or from the outside;
- The IPR boilerplate permits to provide a snapshot in time when the information provided has been collected, but warns any user that this information may not be complete, accurate, or may become progressively obsolete as time passes;
- The IPR boilerplate permits the ITU to advertise its very valuable IPR database, which should contain the most up-to-date information with respect to any declared technical patent that may be essential to a Recommendation;
- And finally, it is innocuous to keep the IPR boilerplate as it is for all Recommendations, including the A-Series of Recommendations, because this practice is future-proof, especially if and when working methods may be developed in order to produce software or any machine-readable representation (such as SDL as specified in [ITU Z.100], or codec reference implementation or test-suites in the C-language [ISO 9899] or any other formal language);

- There may be other reasons which were provided at this meeting or during the TSAG ad hoc session, but the above list is amply sufficient to demonstrate the intended benefits of keeping the IPR boilerplate as is (Option 1: status quo).

### 1.3 Conclusion of the IPR Ad Hoc Group meeting on 7 December 2021

After hearing :

- only opposition and no support at all for any of the changes proposed in Option 2 of [TSAG-TD-GEN-1165](#) (building upon and expanding the proposal on page 5 of [TSAG-C-195](#)) to the current IPR boilerplate;
- no adverse effect in keeping the IPR boilerplate as is for all Recommendations including the A-series; and
- only intended and positive effects of the current IPR boilerplate;

the Chair ended the discussion by asking if there were any objection to keep the IPR boilerplate as it is, and hearing none, concluded that **by consensus the IPR Ad Hoc Group meeting advises the TSB Director to keep the IPR boilerplate as it is for all Recommendations.**

The Author of [TSAG-C-195](#), Mr Dmitry Cherkesov, asked the Chair to prepare a meeting report in a more substantial format than usual for the record. That was accepted by the Chair and there was no objection.

Having used half the meeting time, at 17h07 Mr Serge Raes, Rapporteur on patent issues, handed it over to Mr Hung Ling, Rapporteur on marks issues, who chaired the 2<sup>nd</sup> half of the meeting dedicated to the presentation and discussion of TSAG-C-197 as described in Section 2.2.

Subsequently to the meeting, the Russian Federation provided the following statement:

*Russian Federation strongly oppose conclusion made in 1.2 point 7, because it makes possible claim any IPR rights to A-series implementers, if working methods of ITU described in A-series will be implemented outside of ITU. It is also contradicts with Plenipotentiary Resolution 66 Documents and publications of the Union, at least resolves 5 and 6.*

## 2. [TSAG-C-197](#)

### 2.1 Ad Hoc session on 26 October 2021

Chaired by Mr Hung Ling (Nokia), rapporteur for marks issues of the TSB Director's AHG on IPR.

During the Plenary meeting on Monday 25 October, Mr Gracie provided a response to the questions posted in [TSAG-C-197](#).

For the Russian Federation contribution to the IPR AHG on Marks issues, Mr Dmitry Cherkesov was offered the opportunity to speak and elaborate on some of its concerns raised in its contribution to a TSAG audience. Two highlighted proposals were:

- (1) Section 2/paragraph 2: the Russian Federation proposes to change “should” to “shall” in “if the use of a mark is such that it would require a license, then it should not be included in the Recommendation.”; and
- (2) Section 2/paragraph 1: the Russian Federation believes there is not alignment in the sentence of “The appearance that a Recommendation endorses any particular products, services or companies/organizations must be avoided” and the following sentence where the word “should” is used in “Therefore, proper names, trademarks, service marks or certification marks of specific companies/organizations, products or services should not be included in the text of an ITU-T Recommendation or in an appendix (or the equivalent) if it appears that they might cause this effect on a reader of an ITU-T Recommendation”.

There was no opinion expressed to support those concerns in the session, while a number of opinions were expressed to support NO change to the Marks Guidelines document (other than a minor correction to a link embedded in the document). The reasons vary from opting to give ITU flexibility and possibility to negotiate for a “no license needed” to concern about unintended consequences from such proposed changes.

The Chair concluded as such, and as the IPR AHG is the guardian of the Marks Guidelines, will bring the topic and collective comments from the TSAG session back to the IPR AHG one more time to see if there is consensus to continue such discussion on the mailing list or via an e-meeting.

## **2.2 IPR Ad Hoc Group meeting on 7 December 2021**

At the start of the discussion of [TSAG-C-197](#) during the second half of the AHG virtual meeting, the Chair made a general comment that the principal purpose of the Marks Guidelines is to avoid the appearance of endorsement in ITU standards (Recommendations) of “any particular products, services or companies/organizations”. On the contrary, the adoption of these Guidelines does not aim to prohibit ITU to incorporate or make reference to texts or standards belonging to another SDO in cases where the names of these standards are protected by trademark laws. If there are concerns regarding potential liability of ITU from using such names in ITU Recommendations, the ITU Secretariat may always seek an assurance from the SDO in question that they have no objection indeed for ITU to use such names. Examples of making appropriate references to an outside SDO and standard were provided, with reference to Section 3.1, point 2, of the Guidelines.

[TSAG-TD-GEN-1165](#) was opened to show the conclusion from the TSAG ad hoc session on IPR matters and then the floor was given to Mr Dmitry Cherkesov to speak to his contribution on marks issue, which was embedded in [TSAG-C-197](#). Comments from attendees are captured as follows by the main topic being discussed:

- Section 2: The use of “must” in sentence #2 versus the use of “should” in sentence #4
  - The use of “must” represents a strict requirement to avoid any chance of endorsement of any kind that will go down the commercial path;
  - The subsequent use of “should” in sentence #4 represents an explanation and expansion on sentence #2 and hence may include terms that do not require trademark protection;
  - To people with expertise in such area, the distinction is clear and obvious but could be confusing to people not versed in the subject; it will take an extraordinary amount of effort to detail the distinctions and such effort is not necessary as the ITU Secretariat can adequately address any related questions, and has already addressed them several times in the present case prior to this meeting;
  - The marks Guidelines document is time-tested over the years and no changes are needed
  - The marks Guidelines dated back to 2005 and the goal, then and now, is to discourage commercial endorsement of any kind but does not want to totally exclude common and appropriate references (or citations).
- The term “proper names” is introduced in Section 2 without definition
  - It is noted that the term “proper names” is used and explained in Section 3 and hence Section 2 “General Approach” should not be read in isolation to Section 3 “Exceptions to the General Approach”, which explicitly provides a broad and non-exhaustive list of such exceptions;
  - Section 3.1 (2) also gives examples where it is appropriate and required that technical experts include the name of the source SDO as part of the designation of the standards that they reference;

- Section 3.2 gives 3 different categories of examples of incorrect versus correct usages of marks, and further examples along the same line (incorrect/correct) were provided at the meeting.
- What circumstance(s) will prompt a Study Group to seek marks protection as described in Section 4 (This was not an issue raised in the contribution from the Russian Federation)
  - An example was given from Study Group 12/Q9 on testing the perceptual quality of voice and audio and the use of the registered names “PESQ” and “POLQA” for referring to the test suites and the testing software available under license from one of the company participants. Further reading is available at [https://www.itu.int/ITU-D/tech/events/2011/Moscow\\_ZNIIS\\_April11/Presentations/09-Pomy-POLQA.pdf](https://www.itu.int/ITU-D/tech/events/2011/Moscow_ZNIIS_April11/Presentations/09-Pomy-POLQA.pdf);
  - It was observed that Study Groups have a long track of experience and habits in their respective domain and so, based on this experience, they do not need to systematically seek advice or to advise the TSB Director on matters of their expertise and custom.

### 2.3 Conclusion of the IPR Ad Hoc Group meeting on 7 December 2021

The IPR AHG first received the contribution on “Use of Marks in ITU-T Recommendations” from Mr Dmitry Cherkosov on 7 August 2020 and so had more than one year to read and appreciate it prior to this meeting. It is noted that the IPR AHG had already expressed its opinion of “no change needed” in response to an E-Mail consultation initiated by the Rapporteur on marks issues **on 2 October 2020 and which concluded on 10 November 2020.**

The goal of [TSAG-C-197](#) is to seek clarifications, advice, and to assess whether any change is needed in the current Marks Guidelines. In this meeting, this goal has been met with notably a significant deployment of resources and efforts by the Author of the Contribution, the TSB Secretariat and by a panel of international experts, the list of which is provided in Annex. At the end of the time allocated to the discussion of TSAG-C-197, the Chair concluded that no one spoke in support of the concerns raised in the contribution from the Russian Federation on the Use of Marks in ITU-T Recommendations, while attendees who spoke were all against making any changes to the existing Marks Guidelines. **There was no objection to keep the Marks Guidelines as they are, which reflects the consensus reached at the meeting.**

The Author of [TSAG-C-197](#), Mr Dmitry Cherkosov, asked the Chair to prepare a meeting report in a more substantial format than usual for the record. That was accepted by the Chair and there was no objection.

Then Mr Hung Ling, Rapporteur on marks issues, handed it over back to Mr Serge Raes, Rapporteur on patent issues, for closing the meeting.

The Chair Serge Raes closed the meeting at 18h01 CET by thanking all the 35 IPR Ad Hoc Group participants for their valuable feedback on the contents of the two Contributions from the Russian Federation ([TSAG-C-195](#) and [TSAG-C-197](#)). The Chair also thanked the author of these two Contributions, Mr Dmitry Cherkosov. The Chair thanked Anibal Cabrera Montoya, TSB Secretariat, for displaying and highlighting the text as appropriate during the whole meeting.

After the end of the meeting, Mr Bruce Gracie, Chair of TSAG, reminded that the IPR Ad Hoc Group meeting report would be needed in advance to the next TSAG meeting, i.e. at the latest on 22/12/2021. The Rapporteurs on patent issues and on marks issues agreed to undertake the writing of the Draft meeting report and to circulate it to the IPR Ad Hoc Group for comments before the deadline, with the support of the TSB Secretariat.

Subsequently to the meeting, the Russian Federation provided the following statement:

Russian Federation strongly oppose conclusion made in 2.3. Meeting just ignored many points raised in Russian Federation contribution and presentation. At least there were ignorance between differences in the title with only 3 actors/entities/categories and many others that appear in different parts of the Guidelines.

Meeting had no time just look at many issues raised in contribution, including editorial mistakes that already exist in the Guideline, including incorrect link to A.1 and WIPO web-site.

Taking into account discussion at the meeting and Russian Federation statements, we can not agree that it was consensus at the meeting.

Annexes: 1

## Annex

### List of participants

Name	Affiliation
Amy Marasco	IPR AHG Rapporteur (Microsoft)
Hung Ling	IPR AHG Rapporteur (Nokia)
Serge RAES	IPR AHG Rapporteur (Orange)
Adrian Howes	Nokia
Brian Dorini	Interdigital
Bridget Petruczok	Ericsson
Bruce Gracie	TSAG Chairman (Ericsson)
Dirk-Oliver von der Emden	Bakom
Dmitry Cherkosov	Russian Federation
Earl Nied	Intel
Einar Bohlin	ARIN
Elisabeth Opie	Fraunhofer ISS
Emilio Davila Gonzalez	European Commission
Franco Cordera	European Patents Office
Gaelle Martin-cocher	Interdigital
Georg Kreuz	Huawei
Georg Nolte	Panasonic
Gerard Damien Owens	European Patent Office
Gil Ohana	Cisco
Helene Workman	Apple
John Dubiansky	Dolby
Kengo Nagata	NTT
Latonia Gordon	Apple
Michael Atlass	Qualcomm
Michael Li	ZTE
Monica Magnusson	Ericsson
Olivier Dubuisson	Orange
Paul Najarian	United States
Stephane Tronchon	Interdigital
Valerie Hamelin	Orange
Xianghua Zhu	CNIS
Yongda Leng	To be confirmed
Anibal Cabrera	ITU TSB
Martin Euchner	ITU TSB
Nikos Volanis	ITU LAU