

# FRAND / RAND: Do We Have a Problem here? And What About Self-Help?

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# Standards Essential Patents

- Promises, promises
  - Encumbrances or Not?
    - *HTC v. IPCom*, No. 08-1897 (D.DC, December 5, 2011)
    - *Keystone Type Foundry* (2d. Cir. 1921)
  - 3d Party Beneficiary or Not?
    - *Microsoft v. Motorola*, No. C10-1823JLR (W.D. Wash. February 27, 2102)
  - Remedies?

# Standards Essential Patents

- Players
  - Patent Owners (including downstream)
  - Product Manufacturers
  - Public
    - Regulators
    - Patent Offices
    - Others?

# Self-help Opportunities ??

- Patent Owners / Manufacturers
  - FRAND studies
  - Industry Association-based dispute resolution
  - Protective Pools
  - SSO-based
    - Agreement "enhancements"
      - Choice of law
      - 3d Party Beneficiary
      - FRAND-runs-with-patent
      - Remedy limitations

# Self-help Opportunities ??

- Public
  - Shareholder activism
    - Report licenses
  - Creative Commons-like approaches
- Regulators
  - FRAND studies
  - Consultation
    - Leahy / Kohl 15 March 2012 letter to DOJ

# Self-help Opportunities ??

- Patent Offices
  - Facilitate essentiality determination
    - Mandatory ?
      - Substantive Rulemaking – 35 USC §2
      - "disseminating ... information with respect to patents...."
    - Cooperative
  - FRAND studies