

## OW2 Consortium Intellectual Property Rights Policy

December 27, 2006

This version of OW2 Consortium Intellectual Property Rights Policy supersedes all prior versions of OW2 Consortium Intellectual Property Rights policy/guidelines.

This IPR Policy should at all times be interpreted in a manner that is consistent with the Purposes of the OW2 Consortium as set forth in the OW2 Consortium Bylaws. By signing the Membership Agreement or Participant Agreement, as applicable, all Members and Participant agree to comply with this IPR Policy.

### 1 Definitions

- 1.1 Activity: means any collaborative activity as set forth in Article II of the Bylaws including Projects, Initiative and Local Chapter.
- 1.2 Affiliate: means any entity that is directly or indirectly controlled by, under common control with, or that controls the subject party. For purposes of this definition, control means beneficial ownership of more than fifty percent (50%) of the voting power or equity in an entity.
- 1.3 Contribution: shall mean any material including, but not limited to software, software specification, documentation, information, specifications, ideas, concepts, logos, trade names, business methods, business processes, know-how and techniques, submitted to an OW2 Consortium activity by a Member or a Participant in writing or electronically, whether directly on the Web platform maintained by OW2 Consortium or in an in-person meeting or in any electronic conference or mailing list maintained by OW2 Consortium.
- 1.4 Contributor: shall mean a Member or a Participant on whose behalf a contribution is made to an OW2 Consortium Activity.
- 1.5 Member: as used herein, the term "Member" shall be used to refer generically to a "Strategic Member," an "Corporate Member" or an "Individual Member" as set forth in Section 3.01 of the Consortium Bylaws.
- 1.6 Necessary Claims: means claims of a patent or patent application that (a) are owned or controlled by a Member or its Affiliate now or at any future time and (b) are necessarily infringed by implementing the contribution as disclosed with particularity in the specification because there is no non-infringing alternative for implementing the contribution and still complying with such specification.
- 1.7 Open Source License: Any software license abiding by the following criteria: (i) Freedom to redistribute, (ii) Source code must be included in the program, (iii) Freedom to create derivative works, (iv) Integrity of the author's source code (modifications must be distinguished from the original version), (v) No discrimination against persons or groups, (vi) No discrimination against fields of endeavor, (vii) Distribution of license (i.e redistribution of the software shall include the license and must - not need the execution of further license), (viii) The license must not be specific to a product, (ix) The license must not restrict other software, (x) The license must be technology-neutral.
- 1.8 Participant: shall mean any individual undertaking to provide a Software Contribution or any original work of authorship to the OW2 Consortium.
- 1.9 Project: Projects are well identified Consortium collaborative activities aiming at developing software code. The Consortium's activities for software development are organized into Projects. A Project regroups development actions corresponding to one or more technical software components, or the integration of different technical components in order to build a platform.
- 1.10 Project License: The Project License shall be any open source software license a) approved by the Board of the Association for each Project in accordance with reasonable and appropriate criteria and b) compliant with the non-assertion commitment described in Section 4 and/or imposing at least a royalty-free license of any Necessary Claims which cover the contribution of such patent holder, and which is revocable in the case of lack of reciprocity.

- 1.11 Scope: This IPR Policy applies only to Contributions (as defined herein) contributed to OW2 Consortium on or after the Effective Date, provided however, that to the extent Contribution includes elements which were contributed before the Effective Date, this Policy only applies to the elements of that Contribution contributed for the first time after the Effective Date.
- 1.12 Software: shall be defined as any intellectual (non-tangible) product or material designed for use on or in conjunction with a computer or data processing device.
- 1.13 Software Contribution: shall mean any original work of authorship, including any modifications or additions to an existing work submitted for addition to the code base hosted by the Consortium.

## 2 Ownership

- 2.1 The Consortium. Any Intellectual Property Rights developed or created by any of the Consortium's employees alone or by a contractor to the Consortium performing work for the Consortium on a "works for hire" basis or otherwise assigned to or procured by the Consortium (collectively "Consortium Intellectual Property Rights"), shall be owned exclusively by the Consortium, such as trademarks, logos, copyright materials or software
- 2.2 Members. Each member shall retain all right, title, and interest in and to Intellectual Property Rights (including copyright ownership of their original work) contributed to the Consortium and owned, conceived, created, or developed by the respective member. With regard to any name submitted by any Member for approval as the name of the Project, each Member shall remain the owner, except otherwise agreed between such Member and the Consortium, of any related trade name, trademarks or any other commercial indicia.

## 3 License

- 3.1 Project License Determination: Upon submission of a Project, the associated project license is reviewed and approved successively by the Management Office, the Operations Council and the Board of Directors. A Project may be associated with more than one license as it may itself contain components associated with different licenses. The Consortium makes the code available to third party under the agreed-upon Project License or Project Licenses.
- 3.2 Responsibility: The contributor remains sole responsible for all and any legal liabilities associated with the software contributed to, and other contribution submitted to the Consortium. If the contribution is not the original work of the contributor or contain elements which are not the original work of the Contributor, it is the responsibility of the Contributor to secure all necessary authorization from the copyright holder of the original work.
- 3.3 Dual Licensing: For avoidance of any doubt, each Member remains free to license outside of the Project its own software contribution under any other license (i.e. dual licensing).

## 4 Necessary Claims and Non-Assertion

- 4.1 Members' Necessary Claims & Non Assertion: For any of a) its contribution, and b) all Necessary Claims associated therewith (patents for which there is no technically reasonable alternative that does not infringe the patent), each Member expressly agrees not to assert against any Member or any third-party any of its Necessary Claims (but only to the extent such Necessary claims cover the contribution of the non-asserting Member) making, having-made, using, importing, offering to sell, leasing, and selling or otherwise distributing such contribution as part of the Project.
- 4.2 Limitations: Such obligation shall not be effective as to a) any other Member or their Affiliate that does not make a reciprocal Necessary Claims Non-Assertion to such Member and its Affiliates relative to the same Project, and b) any other party who files a lawsuit asserting patents or any other Intellectual Property Rights against Open Source Software user and/or implementer.
- 4.3 No Circumvention: Each Member agrees that it will not transfer, and have not transferred, patents having Necessary Claims, for the sole purpose of circumventing this article.

## 5 General Provisions

- 5.1 **Effective Date.** This Intellectual Property Rights Policy shall become effective immediately upon its adoption by the Consortium's Board of Directors.
- 5.2 **Amendment.** The Board of Directors of the Consortium may amend this IPR Policy as set forth in Section 4.12 (b) of the Bylaws. The provisions in any such amended IPR Policy will be binding, upon all of the Members.
- 5.3 **Legal Compliance:** As set forth in Section 7.05 of the Bylaws, each Member agrees to comply at all times with all applicable laws, rules and regulations with respect to their performance under the Bylaws. The Members understand that in certain lines of business they may be competitors and that it is imperative that they and their representatives act in a manner which does not violate any applicable antitrust law and regulation.
- 5.4 **Confidentiality:** All information disclosed in the context of an OW2 Consortium Activity between Members and the Consortium shall be considered non-confidential and provided under terms consistent with this IPR Policy.
- 5.5 **Warranty:** EXCEPT AS OTHERWISE AGREED IN WRITING, ALL INFORMATION PROVIDED PURSUANT TO THIS IPR POLICY, IS PROVIDED ON AN "AS IS" BASIS, WITH NO WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF NON-INFRINGEMENT, TITLE, ACCURACY, OR ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 5.6 **Liability:** OW2 CONSORTIUM SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS IPR POLICY, INCLUDING INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES EVEN IF OW2 CONSORTIUM OR ITS MEMBERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.
- 5.7 **Headings:** The headings to the sections hereof are for reference purposes only and shall not be used in the interpretation of the content of this document.
- 5.8 **No other rights granted:** No other license to any patent, trade mark, copyright or other proprietary right is granted in this IPR Policy or through any disclosure hereof except where expressly stated.

## OW2 Consortium Intellectual Property Rights Policy

### Revision History

Version	Language	Lead Author	Change	Date
No versioning	English	GM	Initial draft, Guillaume Ménage, France Telecom, further to Legal Task Force discussions	25 APR 06
No versioning	English	GM	Version for first OWW2 Workshop discussion	7 JUL 06
V.0	English	GM-CT		13 OCT 06
V.0.1	English	GM-CT	Added paragraphs 3.1, 3.2,	15 OCT 06
OW2C V.0.0	English	CT	Updated with OW2 Consortium name Added Definitions, Completed General Provisions	27DEC06