

CA/BROWSER FORUM Intellectual Property Rights Policy

DEFINITIONS

1. Overview

This Intellectual Property Rights Policy describes:

- a. licensing goals for CA/Browser Forum (“CAB Forum”)
- b. the patent licensing obligations that CAB Forum Members will undertake as a condition of CAB Forum participation, along with means of excluding specific patents from those obligations
- c. the definitions of a “CAB Forum Royalty-Free License”
- d. an exception handling process for situations in which the Royalty-Free status of a Guideline comes under question
- e. the copyright licensing obligations that CAB Forum Members will undertake as a condition of CAB Forum participation
- f. the definitions of “Essential Claim” and other key terms

2. Licensing and Disclosure Goals for CAB Forum Guidelines

In order to promote the widest adoption of CAB Forum Guidelines, CAB Forum seeks to issue Guidelines that can be implemented on a Royalty-Free (RF) basis subject to the conditions of this policy. CAB Forum will ordinarily not approve a Guideline if it is aware that Essential Claims exist which are not available on RF terms. CAB Forum Members are encouraged to bring to the attention of the CAB Forum any known patent or pending patent application of other organizations that might contain Essential Claims.

3. Patent Licensing Obligations of CAB Forum Participants

As a condition of CAB Forum participation, each CAB Forum Participant shall, subject to Section 4 below, agree to make available under a CAB Forum Royalty-Free (“RF”) License, any Essential Claims related to any CAB Forum Final Guideline or Final Maintenance Guideline. This requirement includes Essential Claims that the Participant or its Affiliates owns and any that the Participant or its Affiliates has the right to license without obligation of payment or other consideration to an unrelated third party.

4. Review of Draft Guidelines and Licensing Exclusions

4.1 Review of Draft Specifications.

Prior to the approval of a CAB Forum Draft Guideline as a CAB Forum Final Guideline or Final Maintenance Guideline there shall be a review period during which Participants may exclude

certain Essential Claims from CAB Forum RF Licenses. The CAB Forum Chair shall initiate the Review Period by distributing to each CAB Forum Participant a notice of review period and a complete draft of the Draft Guideline that is the subject of such notice ("Review Notice"). Each Participant on behalf of itself and its Affiliates shall have sixty (60) days following the date of the receipt of such Review Notice ("Review Period") to review such Draft Guideline and consider any licensing obligations with respect to any Essential Claims that may be encompassed by such Draft Guideline. The approval of a CAB Forum Final Maintenance Guideline shall follow the same process except that the Review Period shall be thirty (30) days.

4.2 Excluding Patents and/or Patent Applications From Royalty Free Licensing Obligations During Review Period.

Except for Essential Claims encompassed by a Participant's Contributions that are actually incorporated into a Final Guideline or Final Maintenance Guideline approved in accordance with the CAB Forum Guideline approval process, Participants may within the Review Period exclude Essential Claims from the CAB Forum RF License. In such case, Participant shall be permitted to either make an election, (i) not to grant a license or (ii) to provide a license with all of the requirements of Section 5.1 with the exception of subsection 5.1 f.

4.3 Conditions and Procedure for Excluding Patents and/or Patent Applications From CAB Forum RF License.

A Participant seeking to exclude Essential Claims from the CAB Forum RF License in accordance with Section 4.2 must provide written notice of such intent to the CAB Forum Chair ("Exclusion Notice") within the Review Period and the Exclusion Notice shall be effective upon its receipt by the CAB Forum Chair. The Exclusion Notice for issued patents and published applications shall include the patent number(s) or title and application number(s), as the case may be, for each of the issued patent(s) or pending patent application(s) that a Participant reasonably believes at the time may contain Essential Claims the Participant wishes to exclude from the CAB Forum RF License. If an issued patent or pending patent application that may contain Essential Claims is not set forth in the Exclusion Notice, such Essential Claims shall continue to be subject to the CAB Forum RF License. The Exclusion Notice for unpublished patent applications must provide either: (i) the text of the filed application; or (ii) identification of the specific part(s) of the Final Guideline or Final Maintenance Guideline whose implementation makes the excluded claim an Essential Claim. If (ii) is chosen, the effect of the exclusion will be limited to the identified part(s) of the Final Guideline or Final Maintenance Guideline. Exclusion Notices shall be published at [URL].

4.4 Effect of Exclusion Notice.

The timing of the Exclusion Notice will determine the effect on the Participant's CAB Forum RF License obligation as specified in Sections 4.4(a) and 4.4(b). If a Participant provides the CAB Forum Chair with an Exclusion Notice in accordance with Section 4.3, then

(a) Such Participant's CAB Forum RF License obligation shall remain in full force and effect for any Essential Claims in a Final Guideline or Final Maintenance Guideline that has been finally

adopted (“Previously Adopted Final Guideline”) by the CAB Forum prior to the date (“Date of Receipt”) that the CAB Forum Chair receives such Participant’s Exclusion Notice; and

(b) Such Participant’s CAB Forum RF License obligation shall remain in full force and effect for any Essential Claims in any Draft Guideline for which a Review Period has been completed unless and to the extent that an Exclusion Notice has been given within such Review Period.

4.5 New Participant Reviews.

If a prospective Participant applies to become a Participant in the CAB Forum, such prospective Participant shall be permitted not less than forty five (45) days to review the Draft Guideline then under review and any previously adopted Final Guidelines and Final Maintenance Guideline of the CAB Forum for any and all Essential Claims and to agree in separate affirmative writing to be committed to the CAB Forum RF licensing requirement, as to any Final Guidelines or Final Maintenance Guidelines or Draft Guidelines for which the Review Period has been completed. Failure to provide such written affirmation shall be deemed a withdrawal of the prospective Participant’s application for participation. With respect to any Draft Guideline for which a Review Period has been commenced, a new Participant shall have the remainder of the review period in which to submit an Exclusion Notice.

5. CAB Forum Royalty-Free (RF) Licensing Requirements

5.1 License Requirements

With respect to Final Guidelines or Final Maintenance Guidelines developed under this policy, a CAB Forum Royalty-Free License shall mean a non-assignable, non-sublicensable license to make, have made, use, sell, have sold, offer to sell, import, and distribute and dispose of Compliant Portions (provided that such license need not extend to any part or function of a product (other than the Compliant Portion therein in which a Compliant Portion is incorporated but that is not itself part of the Compliant Portion) of the Final Guideline or Final Maintenance Guideline that:

- a. shall be available to all, worldwide, whether or not they are CAB Forum Members;
- b. shall extend to all Essential Claims owned or controlled by the Participant and/or its Affiliates;
- c. may be conditioned on licensee providing notice to a buyer of its products or services that they implement an Essential Patent of a particular entity relating to a particular CAB Forum Final Guideline or Final Maintenance Guideline and that licensee’s right to sell the products or services to buyer, and buyer’s use of the products or services, are conditioned on the buyer’s acceptance of the same terms of the RF or RAND License granted to licensee under the CAB Forum IPR Policy
- d. may be limited to implementations of the Final Guideline and Final Maintenance Guideline, and to what is required by the Final Guideline and Final Maintenance Guideline;
- e. may be conditioned on a grant of a reciprocal RF license (as defined in this policy) to all Essential Claims owned or controlled by the licensee or its Affiliates. A reciprocal license

may be required to be available to all, and a reciprocal license may itself be conditioned on a further reciprocal license from all.

- f. may not be conditioned on payment of royalties, fees or other consideration;
- g. may be suspended with respect to any licensee when licensor is sued by licensee for infringement of claims essential to implement any CAB Forum Final Guideline or Final Maintenance Guideline;
- h. may not impose any further conditions or restrictions on the use of any technology, intellectual property rights, or other restrictions on behavior of the licensee, but may include reasonable, customary terms relating to operation or maintenance of the license relationship such as the following: choice of law and dispute resolution;
- i. shall not be considered accepted by an implementer who manifests an intent **not** to accept the terms of the CAB Forum Royalty-Free License as offered by the licensor.

5.2 License Term

- a. The CAB Forum RF license conforming to the requirements in this policy shall be made available by the licensor and/or its Affiliates as long as the Final Guideline or Final Maintenance Guideline is in effect. The term of such license shall be for the life of the patents in question, subject to the limitations of 5.2(b).
- b. If the Final Guideline or Final Maintenance Guideline is rescinded by the CAB Forum, then no new licenses need be granted but any licenses granted before the Final Guideline or Final Maintenance Guideline was rescinded shall remain in effect.

5.3 Survival of CAB Forum RF License Obligation After Participant Termination

A Participant whose participation in the CAB Forum has terminated shall continue to be obligated to grant CAB Forum RF Licenses for (i) any Essential Claims in a Final Guideline and Final Maintenance Guideline that has been adopted by the CAB Forum prior to the effective date of such Participant's termination; (ii) any Essential Claims in such terminating Participant's Contributions incorporated in any Final Guideline or Final Maintenance Guidelines adopted by the CAB Forum after the effective date of such Participant's withdrawal, and (iii) any Essential Claims in any Draft Guideline for which a Review Period has been completed.

6. Copyrights

6.1 Coverage

All Contributions to CA/Browser Forum are accepted on the basis of this Section 6.

6.2 Copyright License Grant

Each CAB Forum Participant, on behalf of itself and its Affiliates, grants to the other CAB Forum Participants and their Affiliates an irrevocable, worldwide, perpetual, royalty-free, nontransferable, nonexclusive copyright license to (1) reproduce, modify and distribute (in any and all print, electronic or other means of reproduction, storage or transmission) its Contributions

for the purpose of developing and publishing Draft Guidelines and Final Guidelines or Final Maintenance Guidelines, and (2) upon release of the Final Guideline or Final Maintenance Guidelines a license to all, worldwide, whether or not they are CAB Forum Participants to reproduce, distribute, make derivative works and display such Final Guidelines or Final Maintenance Guidelines.

6.3 Enforcement of Copyrights

Each CAB Forum Participant (the “Enforcing Participant”) shall have the right, but not the obligation, to enforce the copyright interest in the Final Guidelines or Final Maintenance Guidelines against an infringer. The other Participants shall take such actions as they deem appropriate consistent with the terms of this Agreement, to reasonably cooperate with the Enforcing Participant in its efforts to enforce such copyright interest. For the avoidance of doubt, no Participant shall be required to participate as a plaintiff in an action to enforce the copyright in a Final Guideline or Final Maintenance Guideline.

6.4 Representations and Warranties

CAB Forum Participants that submit Contributions, by making a Contribution, represent and warrant that, to the extent personally known to the individual Contributors under their control:

- a. There are no limits to the CAB Forum Participant’s ability to make the grants, acknowledgments and agreements herein,
- b. The Contribution does not contain source code that is intended to be incorporated as technical components of a Guideline, and
- c. The Contribution, if incorporated into a Final Guideline or Final Maintenance Guideline will not subject the Final Guideline or Final Maintenance Guideline or implementations of the Final Guideline or Final Maintenance Guideline, in whole or in part, to licensing obligations, restrictions or requirements which are inconsistent with those set forth in this Intellectual Property Rights Policy .

7. Exception Handling

7.1. PAG Formation

In the event a patent has been disclosed that may contain an Essential Claim, but such Essential Claim is not available under CAB Forum RF Licensing, a Patent Advisory Group (PAG) will be launched to resolve the conflict. The PAG is an ad-hoc group constituted specifically in relation to the Final Guideline or Final Maintenance Guideline containing the conflict. A PAG may also be formed without such a disclosure if a PAG could help avoid anticipated patent problems.

7.2. PAG Formation After a Guideline Is Adopted

A PAG may also be convened in the event Essential Claims are discovered after a Guideline is issued. In this case the PAG will be open to any interested Member, though the PAG may choose to meet without the holder of the Essential Claims in question.

7.3. PAG Procedures

7.4.1. PAG Formation Timing

The PAG will be convened by a Chair who shall be elected by the PAG and who must not be affiliated with the company owning the Essential Claim that is the subject of the PAG. The timing for convening the PAG is at the discretion of the Chair. In some cases, convening a PAG before a specific patent disclosure is made may be useful. In other cases, it may be that the PAG can better resolve the licensing problems when the specification is at the Review Period level.

7.5.1. Possible PAG Conclusions

After appropriate consultation, the PAG may conclude:

- a. The initial concern has been resolved, enabling the work on the Guideline to continue.
- b. The CAB Forum should be instructed to consider designing around the identified claims.
- c. The PAG should seek further information and evaluation, including and not limited to evaluation of the patents in question or the terms under which CAB Forum RF licensing requirements may be met.
- d. The project relating to the Draft Guideline in question should be terminated.
- e. The Final Guideline or Final Maintenance Guideline should be rescinded.
- f. Alternative licensing terms should be considered.

8. Definition of Essential Claims and Other Key Terms

8.1. Essential Claims

"Essential Claims" shall mean all claims in any patent or patent application in any jurisdiction in the world that would necessarily be infringed by implementation of the Final Guideline or Final Maintenance Guideline. A claim is necessarily infringed hereunder only when it is not possible to avoid infringing it because there is no non-infringing alternative for implementing the Normative Requirements of the Final Guideline or Final Maintenance Guideline. Existence of a non-infringing alternative shall be judged based on the state of the art at the time the guideline is adopted as a Final Guideline or Final Maintenance Guideline. For avoidance of doubt, if all the alternatives for performing a particular function or action would infringe claims of a patent or patent application, then all claims which cover such alternatives would be Essential Claims.

8.2. Limitations on the Scope of Definition of Essential Claims

The following are expressly excluded from and shall not be deemed to constitute Essential Claims:

- a. any claims other than as set forth above even if contained in the same patent as Essential Claims; and
- b. claims which would be infringed only by: portions of an implementation that are not specified in the Normative Requirements of the Final Guideline or Final Maintenance Guideline, or enabling technologies that may be necessary to make or use any product or portion thereof that complies with the Final Guideline or Final Maintenance Guideline and are not themselves expressly set forth in the Final Guideline or Final Maintenance Guideline(e.g., semiconductor manufacturing technology, compiler technology, object-oriented technology, basic operating system technology, and the like); or
- c. the implementation of technology developed elsewhere and merely incorporated by reference in the body of the Final Guideline or Final Maintenance Guideline.
- d. design patents and design registrations.

8.3. Other Key Definitions

- a. **“Affiliate”** means an entity that directly or indirectly controls, is controlled by or is under common control with, a Participant. Control for the purposes of this Agreement shall mean direct or indirect beneficial ownership of more than fifty percent of the voting stock, or decision-making authority in the event that there is no voting stock, in an entity. The CAB Forum Board of Directions may, in its discretion, grant exclusions for related companies of CAB Forum Members which would technically fall within the “Affiliate” definition in situations where it can be shown that there is no intent to circumvent the licensing obligations of Section 5.
- b. **“Compliant Portion”** means only those specific portions of a product (hardware, software or combinations thereof) that implement and are compliant with all Normative Requirements of the Final Guideline or Final Maintenance Guideline (as applicable to such portions that are adopted) and that are within the bounds of the Scope.
- c. **“Contribution”** means material, including Draft Guidelines, Draft Guideline text, and modifications to other Contributions, made verbally or in a tangible form of expression (including in electronic media) which is provided by a Participant in the process of developing a Draft Guideline for the purpose of incorporating such material into a Draft Guideline or a Final Guideline or Final Maintenance Guideline. For a verbal contribution to be deemed a Contribution hereunder it must be memorialized within approved meeting minutes of the CAB Forum.
- d. **“Draft Guideline”** means a version of a CAB Forum guideline that has not been approved as a Final Guideline or Final Maintenance Guideline, regardless of whether or not the Draft Guideline has been published.
- e. **“Final Guideline”** is any version of a Draft Guideline that the Participants have agreed is a final version of such Draft Guideline pursuant to the CAB Forum process for approving Final Guidelines.

- f. **“Final Maintenance Guideline”** is an errata to or amendment of an existing CAB Forum Final Guideline.
- g. **“Normative Requirements”** means those portions of the Final Guideline or Final Maintenance Guideline that are expressly identified as required for compliance with the Final Guideline or Final Maintenance Guideline including those portions of an optional or alternative portion of the Final Guideline or Final Maintenance Guideline that are identified as required for compliance with such optional or alternative portion. For clarity, those portions of the Final Guideline or Final Maintenance Guideline, including any portions of an optional or alternative portion thereof, which are designated by the terms “must”, “shall”, “mandatory”, “normative” or “required” are expressly identified as being required for compliance under this Section 1.12.
- f. **“Participant”** means all entities and their Affiliates that are members of the CAB Forum.
- g. **“Scope”** means those protocols, communication and network interface protocols, application program interfaces, service provider interfaces, physical dimensions and characteristics, data structures and any other hardware and/or software interface technologies solely to the extent disclosed in and required by a Final Guideline or Final Maintenance Guideline for the implementation of systems and methods for managing public/private keys and their associated certificates for securing or managing public/private keys and the implementation of systems and methods for obtaining and validating the accuracy and currency of data in support of certificate issuance, renewal and revocation. The Scope shall include only architectural and interconnection requirements of the Final Guideline or Final Maintenance Guideline and shall not include any implementation examples contained in the Final Guideline or Final Maintenance Guideline unless the Final Guideline or Final Maintenance Guideline expressly states that such implementation examples are to be included within the Scope of the license set forth in Section 5.1.

8.4 Transfer of Essential Claims

Any transfer by Participant or its Affiliates to an unaffiliated third party of a patent having Essential Claims shall be subject to the terms and conditions of this IPR Policy. A Participant may choose the manner in which it complies with this Section, provided that any agreement for transferring or assigning Essential Claims includes a provision that such transfer or assignment is subject to existing licenses and obligations to license imposed on the Participant by standards bodies, specification development organizations, or similar organizations (or language of similar import).