

CA/BROWSER FORUM
Intellectual Property Rights Policy, v. 1.3
(Effective [April date], 2018)

DEFINITIONS

1. Overview

This Intellectual Property Rights Policy describes:

- a. licensing goals for CA/Browser Forum (“CAB Forum”);
- b. the patent licensing obligations that Members will undertake as a condition of participation in CAB Forum Working Groups, 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 Members will undertake as a condition of participation in a Working Group; and
- 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 and its Working Groups seek to issue Guidelines that can be implemented on a Royalty-Free (RF) basis subject to the conditions of this policy. Working Groups will ordinarily not approve a Guideline if they are aware that Essential Claims exist that are not available on RF terms. Members are encouraged to bring to the attention of the applicable Working Group any known patent or pending patent applications of other organizations (Members or non-Members) that might contain Essential Claims.

3. Patent Licensing Obligations of Participants

The following obligations shall apply to all Participants with respect to the Working Groups in which they participate.

3.1 Royalty-Free Licensing Requirements.

As a condition of participating in a Working Group, each Participant shall, subject to Section 4 below, agree to make available under a CAB Forum RF License (as defined in Section 5 below), any Essential Claims related to any Final Guideline or Final Maintenance Guideline of that particular Working Group. This requirement includes Essential Claims that the Participant owns and any that the Participant has the right to license without obligation of payment or other consideration to an unrelated third party.

3.2 Limitation on Licensing Requirements.

The affirmative act of joining a Working Group will obligate a Participant to the CAB Forum RF Licensing obligations.

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 Working Group Participants may exclude certain Essential Claims from CAB Forum RF Licenses. The CAB Forum Chair shall initiate the Review Period by distributing to each Working Group 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 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 Working Group’s Guideline approval process as specified in its charter, Participants may, within the Review Period, exclude Essential Claims from the CAB Forum RF License. In such case, Participants shall be permitted to either make an election, (i) not to grant a license or (ii) to provide a license that complies 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 with a copy to the appropriate Working Group Chair and the CAB Forum public mailing list (public@cabforum.org) (“Exclusion Notice”) within the Review Period. The Exclusion Notice shall be effective upon its receipt by the CAB Forum Chair. The Exclusion Notice shall include identification of the numbered section of the Final Guideline or Final Maintenance Guideline whose implementation makes the excluded claim an Essential Claim 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. For issued patents, the Exclusion Notice shall also include the patent number(s). For pending patent applications, the Exclusion Notice shall also include the title and application number(s). 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. For unpublished patent applications, the Exclusion Notice shall also include a copy of the patent application. In addition, Exclusion Notices shall be published at <https://cabforum.org/ipr-exclusion-notices/>.

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 a timely 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 on which the CAB Forum Chair receives such Participant's Exclusion Notice ("Date of Receipt"); 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.

When a new Participant joins a Working Group, such 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 such Working Group for any and all Essential Claims and to commit in a separate written agreement to the CAB Forum RF License requirement, as to any Final Guidelines or Final Maintenance Guidelines or Draft Guidelines of such Working Group for which the Review Period has been completed. Failure to provide such written agreement will result in the inability to participate in the Working Group. With respect to any Working Group Draft Guideline for which a Review Period has 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) License Requirements

5.1 License Requirements

With respect to Final Guidelines and Final Maintenance Guidelines developed under this policy, a CAB Forum Royalty-Free (RF) 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 or Working Group Participants;
- b. shall extend to all Essential Claims owned or controlled by the Participant;
- c. may be conditioned on the licensee providing notice to a buyer of its products or services that they implement an Essential Claim 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 Intellectual Property Rights 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. 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; and
- 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 a Final Guideline or Final Maintenance Guideline is rescinded by the CAB Forum or the Working Group that developed it, 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 Member Termination

A Member 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 Working Group's Final Guidelines and Final Maintenance Guidelines that have been adopted by a Working Group, in which the terminated Member participated, prior to the effective date of such Member's termination from the CAB Forum; (ii) any Essential Claims in such terminating Member's Contributions incorporated in any Final Guideline or Final Maintenance Guidelines adopted by a Working Group in which the terminating Member participated after the effective date of such Member's withdrawal, and (iii) any Essential Claims in any Draft Guideline for which a Review Period has been completed in a Working Group in which the Member participated.

6. Copyrights

6.1 Coverage

All Contributions to CAB Forum are accepted on the basis of this Section 6.

6.2 Copyright License Grant

Each Working Group Participant grants to the other Participants in such Working Group 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 Members or Working Group Participants, to reproduce, distribute, make derivative works and display such Final Guidelines or Final Maintenance Guidelines.

6.3 Enforcement of Copyrights

Each Participant (the “Enforcing Participant”) in a Working Group shall have the right, but not the obligation, to enforce the copyright interest in that Working Group’s Final Guidelines or Final Maintenance Guidelines against an infringer. The other Participants of that Working Group 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

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

- a. There are no limits to the 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 a technical component 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 a CAB Forum RF License, 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

7.3.1. 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.

7.3.2. 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 License 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 any Normative Requirement in a 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 a Normative Requirement of a 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. If a Normative Requirement in a Final Guideline or Final Maintenance Guideline may be fulfilled by any of a list of specified alternatives, then for determination of whether a claim is an Essential Claim, each of the specified alternatives should be considered independently as if it were the only method for fulfilling that requirement.

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 that 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, another entity. Control for the purposes of this policy 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.
- b. **“CAB Forum Royalty-Free (RF) License”** refers to the license described in Section 5 of this policy.
- c. **“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.
- d. **“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) that 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.

- e. **“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.
- f. **“Final Guideline”** is any version of a Draft Guideline that the Working Group Participants have agreed is a final version of such Draft Guideline pursuant to the Working Group process for approving Final Guidelines.
- g. **“Final Maintenance Guideline”** is an errata to or amendment of an existing CAB Forum Final Guideline.
- h. **“Member”** means an entity that is a member of the CAB Forum, together with its Affiliates.
- i. **“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.
- j. **“Participant”** means a Member who is participating in one or more Working Groups of the CAB Forum, together with its Affiliates. Interested Parties and Associate Members are “Participants” for purposes of any Working Group(s) in which they may be participating, but they do not gain any CAB Forum membership privileges (such as voting rights) thereby.
- k. **“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.
- l. **“Working Group”** means a working group that has been approved by the CAB Forum or Working Group in accordance with the Bylaws. Working Groups may be either “Legacy” (as defined in Section 5.3.4 of the Bylaws) or “Chartered” (as defined in Section 5.3.1(a) of the Bylaws), and they may designate their own Subcommittees, as described in Section 5.3.1(e) of the Bylaws.

8.4 Transfer of Essential Claims

Any transfer by Participant to an unaffiliated third party of a patent having Essential Claims shall be subject to the terms and conditions of this Intellectual Property Rights 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).