
SIP Forum Patent-Related IPR Policy

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Abstract

This document defines the policy of the SIP Forum relative to the patent-related intellectual property rights of contributors and of the SIP Forum for information, ideas, and expressions contained in a SIP Forum “Recommendation” document. Recommendations are generally created to deal with technical implementations, and will usually include text authored by SIP Forum Participant Members. Therefore, a policy is required in order to clarify how the patent-related intellectual property rights of the contributors relate to the rights and obligations of the SIP Forum, and the rights and obligations of those who utilize the information in the Recommendation.

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Introduction

1.1 The IPR issues facing the SIP Forum’s activities

The SIP Forum is not, and does not intend to be a body that defines the SIP protocol standard. However, from time to time technical issues arise about how to use already defined ISP standards to create SIP-based solutions. The SIP Forum provides a venue, and mechanisms for SIP Forum members to create documents, called “Recommendations,” that address these issues.

However, since Recommendations are likely to describe the technical interactions of various elements, and embody methods to resolve problems, such concepts, methods, elements and embodiments may from time to time represent things that have intellectual property rights considerations.

This document specifies the policies of the SIP Forum towards the receipt, use, and possible publication of information of this type.

1.2 Organization of this document

2 Definitions

The following definitions are for terms used in the context of this document.

- a. “Forum”: The SIP Forum organization, comprised of its Full and Participating Members.
- b. “Recommendation”: An official document of the SIP Forum written and published resulting from the activities of a Forum Working Group (or any Task Group organized within a Working Group).
- c. “Contribution”: any written submission to the Forum (which may be in the form of an electronic communication and/or one or more attachments thereto) intended by the Contributor for publication as all or part of a Recommendation
- d. "Working-Draft": temporary documents used in Forum processes leading to a final formal Recommendation. Working-Drafts are posted on the Forum web site or wiki and have a nominal maximum lifetime of 6 months, after which they are removed. Note that Working-Drafts may be archived at other places on the Internet, and not all

of these places remove expired Working-Drafts. Working-Drafts that are under active consideration by the Forum are not removed from the public directory until that consideration is complete. In addition, the author of a Working-Draft can request that the lifetime be extended before the expiration.

- e. "Recommendation": the basic publication series for the Forum. Recommendations are published by the Forum and once published are never modified.
- f. "Contributor": an individual submitting a Contribution
- g. "Reasonably and personally known": means something an individual knows personally or, because of the job the individual holds, would reasonably be expected to know. This wording is used to indicate that an organization cannot purposely keep an individual in the dark about patents or patent applications just to avoid the disclosure requirement. But this requirement should not be interpreted as requiring the Contributor or participant (or his represented organization, if any) to perform a patent search to find applicable IPR.
- h. "Implementing Technology": means a technology that implements a Recommendation.
- i. "Covers" or "Covered" mean that a valid claim of a patent or a patent application in any jurisdiction or a protected claim, or any other Intellectual Property Right, would necessarily be infringed by the exercise of a right (e.g., making, using, selling, importing, distribution, copying, etc.) with respect to an Implementing Technology. For purposes of this definition, "valid claim" means a claim of any unexpired patent or patent application which shall not have been withdrawn, cancelled or disclaimed, nor held invalid by a court of competent jurisdiction in an unappealed or unappealable decision.
- j. "IPR" or "Intellectual Property Rights": means patent, copyright, utility model, invention registration, database and data rights that may Cover an Implementing Technology, whether such rights arise from a registration or renewal thereof, or an application therefore, in each case anywhere in the world.
- k. "He" or "his": means any man or woman without regard to gender.

3 Intellectual Property Rights (IPR) Provisions

In the course of creating Recommendations, the Forum receives contributions in various forms and from many persons. To best facilitate the dissemination of these contributions, it is necessary to understand any intellectual property rights relating to the contributions.

3.1 General Policy

The SIP Forum's policy on patent-related IPR generally emulates that of the IETF, except that the Forum requires contributors to offer a royalty-free license (with sublicense rights) to their patent-related IPR used in their own contributions. Much of the policy expressed here is borrowed from IETF RFCs and BCPs (with author permission), but with organizational and process names changed to reflect the SIP Forum. However, there are substantive differences, and this document – not IETF documents – constitutes the policy of the SIP Forum.

In all matters of intellectual property rights and procedures, the intention is to benefit the membership of the SIP Forum and the public at large, while respecting the legitimate rights of others.

3.1.1 Goals

The IPR policy is designed to serve three goals:

- a. Avoid a policy that may give rise to exposing the SIP Forum to possible litigation over IP rights; and
- b. Minimize in Recommendations the use of concepts, approaches, and elements for which a member company (or other organization) asserts an intellectual property interest;
- c. Minimize inhibitions to the use of concepts, approaches, and elements that are (despite goal b) included in a Recommendation for which a member or other organization asserts an intellectual property interest.

3.1.2 Principles

The policy is also guided by three principles regarding how the Forum deals with claims of Intellectual Property Rights:

- a. The Forum will make no determination about the validity of any particular IPR claim;
- b. The Forum following normal processes can decide to use technology for which IPR disclosures have been made if it decides that such a use is warranted;
- c. In order for the working group and the rest of the Forum to have the information needed to make an informed decision about the use of a particular technology, all those contributing to the working group's discussions must disclose the existence of any IPR the Contributor or other Forum participant believes Covers or may ultimately Cover the technology under discussion. This applied to both Contributors and other participants, and applies whether they contribute in person, via email or by other means. The requirement applies to all IPR of the participant, the participant's

employer, sponsor, or others represented by the participants, that is reasonably and personally known to the participant. No patent search is required.

3.2 Requirements and Representations in Contributions

By submission of a contribution, each person actually submitting the contribution is deemed to agree to the terms and conditions in this Recommendation on his own behalf, on behalf of the organization (if any) he represents and on behalf of the owners of any proprietary rights in the contribution. Where a submission identifies contributors in addition to the contributor(s) who provide the actual submission, the actual submitter(s) represent that each other named contributor was made aware of and agreed to accept the same terms and conditions on his own behalf, on behalf of any organization he may represent and any known owner of any proprietary rights in the contribution.

3.2.1 Requirement for disclosure by contributor

The Contributor represents that he has disclosed the existence of any proprietary or intellectual property rights in the contribution that are reasonably and personally known to the contributor. The Contributor does not represent that he personally knows of all potentially pertinent proprietary and intellectual property rights owned or claimed by the organization he represents (if any) or third parties.

3.2.2 Representations of contributor

The Contributor represents that there are no limits to the Contributor's ability to make the grants acknowledgments and agreements above that are reasonably and personally known to the contributor and that the Contributor has read and has agreed to the provisions of the SIP Forum Copyrights and Trademark Rights in Contributions.

3.3 IPR Disclosures

This section discusses aspects of obligations associated with IPR disclosure.

This document refers to the Forum participant making disclosures, consistent with the general Forum philosophy that participants in the Forum act as individuals. A participant's obligation to make a disclosure is also considered satisfied if the IPR owner or the participant's employer or sponsor makes an appropriate disclosure in place of the participant doing so.

3.3.1 Who Must Make an IPR Disclosure?

3.3.1.1 A Contributor's IPR in his Contribution

Any Contributor who reasonably and personally knows of IPR meeting the conditions of Section 3.3.6 which the Contributor believes Covers or may ultimately Cover his Contribution, or which the Contributor reasonably and personally knows his employer or sponsor may assert against Implementing Technologies based on such Contribution, must make a disclosure in accordance with this Section 3.

An IPR discloser is requested to withdraw a previous disclosure if a revised Contribution negates the previous IPR disclosure, or to amend a previous disclosure if a revised Contribution substantially alters the previous disclosure.

Contributors must disclose IPR meeting the description in this section; there are no exceptions to this rule.

3.3.1.2 A Forum Participant's IPR in Contributions by Others

Any individual participating in a Forum discussion who reasonably and personally knows of IPR meeting the conditions of Section 3.3.6 which the individual believes Covers or may ultimately Cover a Contribution made by another person, or which such Forum participant reasonably and personally knows his employer or sponsor may assert against Implementing Technologies based on such Contribution, must make a disclosure in accordance with this Section 3.

3.3.1.3 IPR of Others

If a person has information about IPR that may Cover Forum Contributions, but the participant is not required to disclose because they do not meet the criteria in Section 3.3.6 (e.g., the IPR is owned by some other company), such person is encouraged to notify the Forum by sending an email message to ipr@sipforum.org. Such a notice should be sent as soon as reasonably possible after the person realizes the connection.

3.3.2 The Timing of Providing Disclosure

Timely IPR disclosure is important because working groups need to have as much information as they can while they are evaluating alternative solutions.

3.3.2.1 Timing of Disclosure Under Section 3.3.1

The IPR disclosure required pursuant to section 3.3.1 must be made as soon as reasonably possible after the Contribution is published in a Working-Draft unless the required disclosure is already on file.

For example, if the Contribution is an update to a Contribution for which an IPR disclosure has already been made and the applicability of the disclosure is not changed by the new Contribution, then no new disclosure is required. But if the Contribution is a

new one, or is one that changes an existing Contribution such that the revised Contribution is no longer Covered by the disclosed IPR or would be Covered by new or different IPR, then a disclosure must be made.

If a Contributor first learns of IPR in its Contribution that meets the conditions of Section 3.3.6 if, for example, a new patent application or the discovery of a relevant patent in a patent portfolio, after the Contribution is published in a Working-Draft, a disclosure must be made as soon as reasonably possible after the IPR becomes reasonably and personally known to the Contributor.

Participants who realize that a Contribution will be or has been incorporated into a submission to be published in a Working-Draft or Recommendation, or is seriously being discussed in a working group, are strongly encouraged to make at least a preliminary disclosure. That disclosure should be made as soon after coming to the realization as reasonably possible, not waiting until the document is actually posted or ready for posting.

3.3.2.2 Timing of Disclosure Under Section 3.3.1.2

The IPR disclosure required pursuant to section 3.3.1.2 must be made as soon as reasonably possible after the Contribution is published in a Working-Draft or Recommendation, unless the required disclosure is already on file. Participants who realize that the IPR will be or has been incorporated into a submission to be published in a Recommendation, or is seriously being discussed in a working group, are strongly encouraged to make at least a preliminary disclosure. That disclosure should be made as soon after coming to the realization as reasonably possible, not waiting until the document is actually posted or ready for posting.

If a participant first learns of IPR that meets the conditions of Section 3.3.6 in a Contribution by another party, for example a new patent application or the discovery of a relevant patent in a patent portfolio, after the Contribution was published in a Working-Draft or Recommendation, a disclosure must be made as soon as reasonably possible after the IPR becomes reasonably and personally known to the participant.

3.3.3 How Must a Disclosure be Made?

IPR disclosures are made by following the instructions at the SIP Forum's website (URL for this is currently <http://www.sipforum.org/content/view/239/217/>).

3.3.4 What Must be in a Disclosure?

3.3.4.1 Basis of claims

The disclosure must list the numbers of any issued patents or published patent applications or indicate that the claim is based on unpublished patent applications. The

disclosure must also list the specific Forum Document(s) sections or activity affected with enough specificity so that the Forum may see how the Forum Document, or section thereof, may necessarily infringe on the claimed patent. If the Forum Document is a Working-Draft, it must be referenced by specific version number. Clarification and updates

If a disclosure was made on the basis of a patent application (either published or unpublished), then, if requested to do so by a working group chair, the Forum Managing Director can request a new disclosure indicating whether any of the following has occurred: the publication of a previously unpublished patent application, the abandonment of the application and/or the issuance of a patent thereon. If the patent has issued, then the new disclosure must include the patent number and, if the claims of the granted patent differ from those of the application in manner material to the relevant Contribution, it is helpful if such a disclosure describes any differences in applicability to the Contribution. If the patent application was abandoned, then the new disclosure must explicitly withdraw any earlier disclosures based on the application.

New or revised disclosures may be made voluntarily at any time.

3.3.4.2 Inadequate disclosure

The requirement for an IPR disclosure is not satisfied by the submission of a blanket statement of possible IPR on every Contribution. This is the case because the aim of the disclosure requirement is to provide information about specific IPR against specific technology under discussion in the Forum. The requirement is also not satisfied by a blanket statement of willingness to license all potential IPR under fair and non-discriminatory terms for the same reason. However, the requirement for an IPR disclosure is satisfied by a blanket statement of the IPR discloser's willingness to license all of its potential IPR meeting the requirements of Section 3.3.6 (and either Section 3.3.1 or 3.3.1.2) to implementers of a Forum Recommendation on a royalty-free basis as described in Section 3.7.1 as long as any other terms and conditions are disclosed in the IPR disclosure statement. It is the responsibility of the IPR discloser to validate he owns the full IP rights or is authorized to disclose these on behalf of the IPR owner.

3.3.5 What Licensing Information to Detail in a Disclosure

Since IPR disclosures will be used by Forum working groups during their evaluation of alternative technical solutions, it is helpful if an IPR disclosure includes information about licensing of the IPR in case Implementing Technologies require a license. Specifically, it is helpful to indicate whether, upon approval by the Forum Board of Directors for publication as Forum Recommendation(s), all persons will be able to obtain the right to implement, use, distribute and exercise other rights with respect to an

Implementing Technology a) under a royalty-free or otherwise reasonable and non-discriminatory license, or b) without the need to obtain a license from the IPR holder.

The inclusion of licensing information in IPR disclosures is not mandatory but it is encouraged so that the working groups will have as much information as they can during their deliberations. If the inclusion of licensing information in an IPR disclosure is not available and would significantly delay its submission it is quite reasonable to submit a disclosure without licensing information and then submit a new disclosure when the licensing information becomes available.

3.3.6 When is a Disclosure Required?

IPR disclosures under Sections 3.3.1. and 3.3.1.2 are required with respect to IPR that is owned directly or indirectly, by the individual or his/her employer or sponsor (if any) or that such persons otherwise have the right to license or assert. It is the responsibility of the license owner to ensure that an IPR disclosure doesn't invalidate any in-progress patent applications of the license owner.

3.4 Failure to Disclose

There are cases where individuals are not permitted by their employers or by other factors to disclose the existence or substance of patent applications or other IPR. Since disclosure is required for anyone submitting documents or participating in Forum discussions, a person who does not disclose IPR for this reason, or any other reason, must not contribute to or participate in Forum activities with respect to technologies that he or she reasonably and personally knows to be Covered by IPR which he or she will not disclose.

Contributing to or participating in Forum discussions about a technology without making required IPR disclosures is a violation of Forum process.

3.5 Evaluating Alternative Technologies in Forum Working Groups

In general, Forum working groups prefer technologies with no known IPR claims or, for technologies with claims against them, an offer of royalty-free licensing. But Forum working groups have the discretion to adopt technology with a commitment of fair and non-discriminatory terms, or even with no licensing commitment, if they feel that this technology is superior enough to alternatives with fewer IPR claims or free licensing to outweigh the potential cost of the licenses.

There may from time to time be mandatory-to-implement security technology in Forum technology specifications. This is to ensure that there will be at least one common security technology present in all implementations of such a Recommendation that can be used in all cases. This does not limit the specification from including other security technologies, the use of which could be negotiated between implementations. No

mandatory-to-implement security technology can be specified in a Forum specification unless it has no known IPR claims against it or a royalty-free license is available to implementers of the specification unless there is a very good reason to do so. This limitation does not extend to other security technologies in the same specification if they are not listed as mandatory-to-implement.

It should also be noted that the absence of IPR disclosures is not the same thing as the knowledge that there will be no IPR claims in the future. People or organizations not currently involved in the Forum or people or organizations that discover IPR they feel to be relevant in their patent portfolios can make IPR disclosures at any time.

It should also be noted that the validity and enforceability of any IPR may be challenged for legitimate reasons, and the mere existence of an IPR disclosure should not automatically be taken to mean that the disclosed IPR is valid or enforceable. The Forum makes no actual determination of validity, enforceability or applicability of any particular IPR claim.

3.6 Actions for Documents for which IPR Disclosure(s) Have Been Received

3.6.1 Notice

When any Intellectual Property Right is disclosed before publication as a Recommendation, with respect to any technology or specification, the RFC Editor shall ensure that the document include a note indicating the existence of such claimed Intellectual Property Rights in any RFC published from the Contribution. (See Section 3.9 below.)

3.6.2 Disclosure

Where any patents, patent applications, or other proprietary rights are known, or claimed, with respect to any Recommendation, and brought to the attention of the Forum, the Forum shall not advance the Recommendation without including in the document a note indicating the existence of such rights, or claimed rights. Where implementations are required before advancement of a specification, only implementations that have, by statement of the implementers, taken adequate steps to comply with any such rights, or claimed rights, shall be considered for the purpose of showing the adequacy of the specification.

3.6.3 No assertions regarding validity

The Forum disclaims any responsibility for identifying the existence of or for evaluating the applicability of any IPR, disclosed or otherwise, to any Forum Recommendation, and will take no position on the validity or scope of any such IPR claims.

3.6.4 Action of Working Groups relative to claimed IPR

The Working Group proposing the use of the technology with respect to which the proprietary rights are claimed may assist the SIP Forum Managing Director in this effort. The results of this procedure shall not affect adoption of a specification, except that 1) the relevant Task Group may choose to alter the specification to avoid such claims based on the consensus of the Task Group, and 2) the Forum may defer approval where a delay may facilitate the obtaining of such assurances. The results, including any other licensing or claim information provided, will be recorded by the SIP Forum Managing Director, and made available to the general public. The SIP Forum may also direct that a summary of the results be included in any Recommendation published containing the specification.

3.6.5 Assurance of right to use

Where Intellectual Property Rights have been disclosed for Forum Recommendations as provided in Section 3 of this document, the Forum Managing Director may request from the discloser of such IPR a written assurance that upon approval by the Forum Board of Directors for publication as RFCs of the relevant Forum Recommendation(s), all persons will be able to obtain the right to implement, use, distribute and exercise other rights with respect to Implementing Technology under the licensing terms specified in Section 3.7.1 below unless such a statement has already been submitted. The working group proposing the use of the technology with respect to which the Intellectual Property Rights are disclosed may assist the Forum Managing Director in this effort. The results of this procedure shall not, in themselves, block publication of a Recommendation or advancement of a Forum Recommendation. A working group may take into consideration the results of this procedure in evaluating the technology, and the SIP Forum Board of Directors may defer approval when a delay may facilitate obtaining such assurances. The results will, however, be recorded by the Forum Managing Director, and be made available online.

3.7 Grant by contributor of royalty-free license

3.7.1 Royalty-free license to use

Where the SIP Forum knows of rights, or claimed rights under paragraph 1 of this section, the Managing Director of the SIP Forum may attempt to obtain from the claimant of such rights, a worldwide, perpetual, royalty-free license to use, and sublicense all of the claimed technology necessary to implement the relevant specification(s). For the purposes of this section, the following terms are suggested:

In the event the claimant owns a patent having one or more claims applicable to the specification, the claimant shall grant to other entities a world-wide royalty

free, non-exclusive license to manufacture, use and/or sell products that are covered by claims of any such patent, provided that the license under such claim(s) is necessary to practice the specification. The license to be granted by the claimant (a) does not apply to any claims which are not necessary to practice the specification, (b) allows the licensee to grant sublicenses to licensed technology to third parties under the same terms as those granted by the initial licensor, and (c) does not extend to any entity or a subsidiary of such entity, that will not grant to the claimant, or other third-parties, a reciprocal license to manufacture, use and/or sell products conforming to the specification upon the terms offered hereunder with respect to patents owned by such entity or a subsidiary or organization controlled by such entity.

3.7.2 Determination of compliance to conditions

The SIP Forum will not make any explicit determination that the conditions of this section have been fulfilled in practice. It will instead use the normal requirements for the advancement of SIP Forum Recommendations to verify that the terms for use conform to this document.

3.7.3 Licensing Requirements to Advance Standards Track Forum Documents

Section 2.7 of the sf-draft-admin-batson-recommendations (or the formal Recommendation that emerges from this draft) requires that:

Prior to adoption, the Task Group must be able to identify two independent instances of applications that are substantially compliant with the proposed Recommendation.

The mere existence of disclosed IPR does not necessarily mean that licenses are actually required in order to implement the technology. This requirement should be taken to apply to the case where there are multiple implementations and none of the implementers have felt that they needed to license the technology and they have no plausible indications that any IPR holder(s) will try to enforce their IPR, or at their own option the implementers have obtained licenses to satisfy what they view as a requirement to obtain a license.

3.8 Change Control for Technologies

The Forum must have change control over the technology described in any standards track Forum Documents in order to fix problems that may be discovered or to produce other derivative works.

In some cases the developer of patented or otherwise controlled technology may decide to hand over to the Forum the right to evolve the technology (a.k.a., "change control").

The implementation of an agreement between the Forum and the developer of the technology can be complex. (See IETF [RFC1790] and [RFC2339] for examples.)

Note that there is no inherent prohibition against a Forum Document making a normative reference to proprietary technology. For example, a number of Forum Standards support proprietary cryptographic transforms.

3.9 Notices

3.9.1 Basic IPR disclaimer

All SIP Forum documents shall include the following notice:

"The SIP Forum takes no position regarding the validity or scope of any intellectual property or other rights that might be claimed to pertain to the implementation or use of the technology described in this document or the extent to which any license under such rights might or might not be available; neither does it represent that it has made any effort to identify any such rights. Information on the SIP Forum's procedures with respect to rights in SIP Forum Recommendations, both drafts and final versions, claimed rights, or other similar documentation can be found in the SIP Forum's current adopted intellectual property right Recommendation.

3.9.2 Knowledge of potential IPR claims

The following language shall be included in a Recommendation, depending on whether the Forum (in conjunction with the activities undertaken in a Working Group) is aware at the time of publication of proprietary rights claimed with respect to a Recommendation, or the technology described or referenced therein.

"The SIP Forum has been notified of intellectual property rights claimed in regard to some or all of the specification contained in this document. For more information consult the SIP Forum's online list of claimed rights."

In this case, the Forum's website shall list all claimed rights on the web page wherein the published Recommendation is linked.

3.9.3 Invitation for notice of claims

All documents shall contain the following notice:

"The SIP Forum invites any interested party to bring to its attention any copyrights, patents or patent applications, or other proprietary rights that may cover technology that may be required to implement this Recommendation. Please address the information to the SIP Forum Managing Director."

4 Administrivia

4.1 Editor and contact

The editor of this document is Marc Robins, acting Managing Director of the SIP Forum,
Email: marc.robins at sipforum dot com

4.2 References

sf-draft-admin-batson-recommendations – Recommendations Process – Revision 5,
Jay Batson, 2005-05-11

IETF RFC 1790 -

IETF RFC 2026, BCP 9 – The Internet Standards Process – Revision 3, Scott Bradner,
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IETF RFC 2339 -

IETF RFC 3739 – Intellectual Property Rights in IETF Technology – Scott Bradner,
March 2005

4.3 Intellectual Property Right Notices

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The SIP Forum takes no position regarding the validity or scope of any intellectual property or other rights that might be claimed to pertain to the implementation or use of the technology described in this document or the extent to which any license under such rights might or might not be available; neither does it represent that it has made any effort to identify any such rights. Information on the SIP Forum's procedures with respect to rights in SIP Forum Recommendations, both drafts and final versions, or other similar documentation or claimed rights can be found in the SIP Forum's current adopted intellectual property right Recommendation.

The SIP Forum invites any interested party to bring to its attention any copyrights, patents or patent applications, or other proprietary rights that may cover technology that may be required to implement this Recommendation. Please address the information to the SIP Forum Managing Director.