



ANONYOME LABS

Implications of Usage and Participation Licenses

Steve McCown

28 Feb 2024

Background

GNU Public License V3.0 (2007)

- Motivation:
 - “... guarantee end users the four freedoms to run, study, share, and modify the software”
https://en.wikipedia.org/wiki/GNU_General_Public_License
- Requirement:
 - Explicit patent grants from contributors and implementors
 - Applications that include GPL code must also release the application source
- Exceptions
 - System libraries, GPL linking exception (https://en.wikipedia.org/wiki/GPL_linking_exception), etc.
- General Legal Advice
 - Most commercial entities have a prohibition against including GPLv3 code
 - Does that hinder the GPL authors and implementers?

Background

Apache 2.0 License

- Requires a patent grant from contributors:
 - **“each Contributor hereby grants to You a perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable (except as stated in this section) patent license to make, have made, use, offer to sell, sell, import, and otherwise transfer the Work, where such license applies only to those patent claims licensable by such Contributor that are necessarily infringed by their Contribution(s) alone or by combination of their Contribution(s) with the Work to which such Contribution(s) was submitted.”**
<https://www.apache.org/licenses/LICENSE-2.0>
- Permissive license
 - Include attribution license, copyright, disclaimer, etc. in derivative works
 - Easy for implementers to use

JDF Patent Policy Options

1. RAND-RF (Royalty-Free) Mode
2. International Mode
3. Open Web Foundation 1.0 Mode
4. W3C Mode

RAND-RF (Royalty-Free) Mode

- Reasonable and non-discriminatory (RAND)
 - License terms apply equally
- Patent Commitment
 - “**each Working Group Participant agrees** that it will offer to all applicants a royalty free, nonexclusive, worldwide, non-sub licensable, perpetual patent license to its Necessary Claims on fair, reasonable, and non-discriminatory terms” (source: ToIP JDF)
- Exclusion
 - “**Exclusion. Prior to the adoption of a Draft Deliverable as an Approved Deliverable, a** Working Group Participant may exclude Necessary Claims from its licensing commitments under this agreement by providing written notice of that intent to the Working Group chair (“Exclusion Notice”)” (source: ToIP JDF)
- Easy to contribute and implement

International Mode

Standards published by ITU, ISO, IEC will use:

- ISO/IEC/ITU common patent policy
 - <https://www.iso.org/iso-standards-and-patents.html>
- The Forward section in ISO standards displays this disclaimer:
 - “Attention is drawn to the possibility that some of the elements of this document may be the subject of patent rights. ISO and IEC shall not be held responsible for identifying any or all such patent rights. Details of any patent rights identified during the development of the document will be in the Introduction and/or on the ISO list of patent declarations received (see www.iso.org/patents) or the IEC list of patent declarations received (see <https://patents.iec.ch>).”

International Mode (cont.)

Covered Patent Situations, patent holder will:

1. **[Free]** “negotiate licenses free of charge with other parties on a nondiscriminatory basis on reasonable terms and conditions”
2. **[Fee]** “willing to negotiate licences with other parties on a non-discriminatory basis on reasonable terms and conditions”
3. **[Remove]** “not willing to comply with the provisions of either paragraph 2.1 or paragraph 2.2; in such case, the Recommendation | Deliverable shall not include provisions depending on the patent.”

Summary

- Easy to use and implement
- Licenses are either free or have a fee, but are non-discriminatory

Open Web Foundation 1.0 Mode

Note: Links in JDF are incorrect (404), current links

- CLA Copyright and Patent
 - (<https://www.openwebfoundation.org/the-agreements/the-owf-1-0-agreements-granted-claims/owf-contributor-license-agreement-1-0-copyright-and-patent>)
- OWFa 1.0 Copyright and Patent
 - (<https://www.openwebfoundation.org/the-agreements/the-owf-1-0-agreements-granted-claims/owfa-1-0>)
- FAQs
 - (<https://www.openwebfoundation.org/faqs/open-web-foundation-cla-1-0-owfa-1-0-faq>)

Consists of:

- Contributor License Agreement
- Open Web Foundation Agreement

Open Web Foundation 1.0 Mode (cont.)

CLA

- Promise not to exercise patents for signer's contributions only
- 45-day patent opt-out period for Contributions
- No requirement to sign OWFa, however...
 - 6. Open Web Foundation Agreement ("OWFa") version 1.0 Execution. I acknowledge that the goal of this CLA is to develop a specification that will be subject to the OWFa version 1.0. **While I have no legal obligation to execute the OWFa version 1.0** for any version of the specification being developed under this CLA, **I agree that the selection and terms of the OWFa version 1.0 will not be subject to negotiation.**
- While CLA only covers a signer's contributions, it also appears to commit the signer to the terms of the OWFa whether or not they sign it

Open Web Foundation 1.0 Mode (cont.)

OWFa

- Promise not to exercise patents for all contributions
 - Covers the entire specification (not just contributor's contributions)
 - “3.1.1. The Promise. I, on behalf of myself and my successors in interest and assigns, irrevocably promise not to assert my Granted Claims against you for your Permitted Uses...”
 - “3.1.3. Additional Conditions. This promise is **not an assurance** (i) that **any of my copyrights or issued patent claims** cover an implementation of the Specification or are **enforceable** or (ii) that **an implementation of the Specification would not infringe intellectual property rights of any third party**. Notwithstanding the personal nature of my promise, this promise is intended to be **binding on any future owner, assignee or exclusive licensee** to whom has been given the right to enforce any Granted Claims against third parties.”

Open Web Foundation 1.0 Mode (cont.)

Things to consider

- What is the commitment?
 - CLA
 - Only covers contributor's contributions
 - However, requires a commitment to not negotiate the OWFa?
 - OWFa
 - Covers all contributions
- Does not protect against patent infringement (outside of WG participants)
 - OWFa: “not an assurance ... (ii) that an implementation of the Specification would not infringe intellectual property rights of any third party”
 - FAQ: “implementers should beware: Outside of that zone of patent protection, no promises apply.”
 - FAQ: “Implementers are individually responsible for evaluating the patent landscape”

Open Web Foundation 1.0 Mode (cont.)

Things to consider

- Infringement Discovered later
 - “3.1.2.1. As a Result of Claims by You. All rights, grants, and promises made by me to you under this Agreement are terminated if you file, maintain, or voluntarily participate in a lawsuit against me or any person or entity”
 - If a patent holder pursues infringement, they can’t use anything they’ve built using the spec
- From the FAQ
 - Contractors
 - “employees and contractors are assumed to be acting on their employer’s behalf when contributing to industry standards”
 - Do contractors need to notify / inform all current and future contract sponsors? What if they don’t?

This license can create legally uncertain situations.

W3C Mode

W3C Patent Policy

- <https://www.w3.org/Consortium/Patent-Policy-20040205/>
- “W3C will not approve a Recommendation if it is aware that Essential Claims exist which are not available on Royalty-Free terms.” (sec 2)
- “As a condition of participating in a Working Group, each participant ... shall agree to make available under W3C RF licensing requirements any Essential Claims related to the work of that particular Working Group.” (sec 3.1)

Disclosures: what to disclose

- Your IP or anyone else’s IP that you are aware of:
 - “has actual knowledge of a patent which the individual believes contains Essential Claim(s)” (sec 6.1)

Exemption Request

- “participants have a good faith obligation to make such exclusions as soon as is practical after the publication of the first Working Draft that includes the relevant technology.” (sec 4.4)

ToIP Specification Goals

- No patent encumbrances
- Easy to participate
- Easy to adopt
- Easy path to target standards organizations (e.g., ISO)

Thoughts?