

Clarification Update of GGF Copyright and Intellectual Property Policy Statements

Status of This Memo

This memo provides information to the Grid community regarding GGF Copyright and Intellectual Property policies. This document contains updated wording for both Copyright and Intellectual Property policy notices, obsoleting the wording found in Appendix A and Appendix B of GFD-C.1. Distribution is unlimited.

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Abstract

GGF Copyright and Intellectual Property (IP) policies were originally developed based on the policies in use by the Internet Engineering Task Force (IETF) for the purposes of implementing the Internet Standards Process [RFC-2026]. Since that time, IETF has undertaken considerable effort toward clarification of their policy statements via the Intellectual Property Rights Working Group (IPR-WG). GGF legal counsel has reviewed this work, IETF policies, policies of similar organizations (e.g. OASIS, W3C), and the GGF policies. This document contains an updated set of Copyright and Intellectual Property Policy statements intended to clarify the intent of the GGF policies.

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1. Overview of Updates and Rationale

GGF IP Policies are written to address the three following objectives:

- (1) The GGF IP Policies should be clear and fundamentally accurate as to the law.
- (2) The GGF IP Policies should protect contributors from liability when they act reasonably.
- (3) The GGF IP Policies should give any party that uses the specifications that arise through the GGF process a reasonable assurance that it will not be “blindsided” by unreasonable demands for license fees for the use of intellectual property needed for implementation/use of the specifications.

With these updates, the GGF IP Policies now include definitions of key terms (such as “Contributor” and “Contribution”). The language of the Policies has been simplified so that the obligations of Contributors are now clear.

The GGF IP Policies also now indicate that they are the complete statement of the Policies (see new Section 17.5) so that Contributors will not run the risk of facing implied obligations that expose them to liability.

Finally, the revised GGF IP Policies now include an obligation to license necessary patent claims on a RAND basis (while not limiting the ability of Contributors to be even more generous).

An analysis of the IP policies appended to GFD-C.1 is given below as rationale to the updated policy statements contained in this document GWD-C.

1.1 Clear and Accurate Wording

The GGF IP Policies should be clear and fundamentally accurate as to the law.

As currently written, the GGF IP Policies do not meet this objective. Critical terms, such as *contributor* and *contribution* are not defined. Further, these terms are used in multiple ways that make it uncertain as to whom and to what the GGF IP Policies apply. Additionally, there are inaccurate statements concerning the law in the GGF IP Policies. For example, the “Copyright Notice” section of the GGF IP Policies states: “the copyright gives GGF the right to publish the whole document as-is in perpetuity.” This is not true, since the legal term of a *copyright* is limited in term and is not limited to the “document as a whole.”

1.2 Protect Contributors Acting Reasonably

The GGF IP Policies should protect contributors from liability when they act reasonably.

As currently written, it is probably impossible for a contributor to understand and comply with its obligations under the GGF IP Policies. For example, under the IP policies appended to GFD-C.1, contributors are deemed to agree to certain parts of the policies “on behalf of the owners of any propriety (sic) rights in the contribution.” This is the case even though the contributor may not be able to identify the contributing owners or the rights they might have in the contribution. Furthermore, the current GGF IP Policies do not contain any provision to the effect that they are the complete understanding of the GGF concerning the GGF IP Policies and thus the GGF IP Policies might expose contributors to certain implied obligations of disclosure.

1.3 Reasonable Assurance Regarding Licensing

The GGF IP Policies should give any party that uses the specifications that arise through the GGF process a reasonable assurance that it will not be “blindsided” by unreasonable demands

for license fees for the use of intellectual property needed for implementation/use of the specifications.

GFD-C.1, without this amendment, did not contain any requirement for participants in the GGF process to license intellectual property on a reasonable and non-discriminatory ("RAND") basis.

2. Copyright Notices (UPDATED)

The following copyright notice and disclaimer shall be included in all GWD or GFD- documents (each, a "document"):

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3. Intellectual Property Rights and Notices

These GGF intellectual property rights policies (the "GGF IP Policies") are inspired by the intellectual property rights policies and procedures associated with the Internet Standards Process. Terms expressly defined in these updated policies augment and supersede definitions included in GFD-C.1; all other definitions appearing in GFD-C.1 are unchanged. In all matters of intellectual property rights and procedures, the intention is to benefit the "Grid" community and the public at large, while respecting the legitimate rights of others.

BY PARTICIPATING IN ANY WAY IN THE GGF, YOU (AS A PERSON OR AN ENTITY) IRREVOCABLY AGREE TO THESE IP POLICIES.

3.1 Contributions/Contributors

“Contributions” are verbal statements made in convened GGF meetings (where a person authorized by GGF – e.g., a Working Group Chair, an Area Director, or GFSG member – announces that the IP Policies are in effect), as well as all written and electronic communications made at any time or place, which are addressed and/or submitted for distribution to:

- any GGF working or research group or portion thereof;
- the GFSG;
- any GGF mailing list, including any working group or research group list, or any other list functioning under GGF auspices; or
- attendees at other GGF meetings where a person authorized by GGF (e.g., a Working Group Chair, an Area Director, or GFSG member) indicates that the GGF IP Policies are in effect.

A Contribution may have more than one Contributor (as defined below).

“Contributor” means a person or entity that submits or is identified as submitting a Contribution. Employees who submit a Contribution are deemed to be submitting the Contribution on their own behalf and on the behalf of the entity for which they work (in that case, both the entity and the employee are Contributors) unless the employee clearly indicates otherwise in or immediately prior to submitting the Contribution.

By submission of each and every Contribution, the submitting Contributor agrees to these GGF IP Policies. Where a submission identifies Contributors in addition to the submitting Contributor(s), the actual submitter(s) represent(s) that each other named Contributor is aware of and agrees to the GGF IP Policies.

3.2 Confidentiality Obligations

Contributions are not confidential. Each Contributor agrees that any statement in a Contribution, whether generated automatically or otherwise, that states or implies that the Contribution is confidential or subject to any privilege, can be disregarded for all purposes, and will be of no force or effect.

3.3 Rights and Permissions

In the course of its work developing recommendations, GGF receives Contributions in various forms and from many persons. To best facilitate the dissemination and use of these Contributions, the following apply:

1. Some works (e.g., works of the U.S. Government) are not subject to copyright. However, to the extent that a Contribution is subject to copyright, each Contributor grants to GGF, under the Contributor’s copyright, an unlimited, perpetual, irrevocable, non-exclusive, royalty-free, world-wide right and license to: reproduce, adapt, distribute, display, prepare derivative works, and perform the Contribution and derivative works thereof, and to authorize others to do the same.
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7. The Contributor represents that Contributor has a reasonable good faith belief that Contributor has all rights necessary to make the grants, acknowledgements and agreements contained in these GGF IP Policies.

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Where any patents, patent applications, or other claimed proprietary rights that are deemed by their owners or others as likely to be infringed by the exercise of rights in the Contribution granted to the GGF and implementers of the technology are known by or brought to the attention of the GFSG, the GFSG shall not advance the document without including in the document a note indicating the claim of such rights. Where a specification must be implemented before advancement of a document, implementers are solely responsible for appropriately modifying the specification or providing alternative implementations responsive to the claimed rights.

The GFSG disclaims any responsibility for identifying the existence of, or for evaluating the applicability of, any claimed copyrights, patents, patent applications, or other rights in fulfilling its obligations set forth in the previous paragraph, and will take no position on the validity or scope of any such rights.

Where the GFSG knows of claimed rights that the GFSG deems likely to be infringed by the exercise of rights in the Contribution granted to the GGF and implementers of GGF standards (by way of example only, rights of a person in a Contribution when the person is not a Contributor), the GGF secretariat may, but is not obligated to, attempt to obtain from the claimant of such rights, a written assurance that upon approval by the GFSG of the relevant GGF document(s), any party will be able to obtain the right to implement, use and distribute the technology or works when implementing, using or distributing technology based upon the specific document(s) under openly specified, reasonable, non-discriminatory terms. The working group or research group proposing the use of the purportedly infringing technology may assist the GGF secretariat in any such effort. The results of this procedure shall not affect approval or advancement of a document in the GGF recommendations process as outlined in GFD-C.1, except that the GFSG may defer approval where a delay may facilitate the obtaining of such assurances. The results of any such attempt by the GGF secretariat will be recorded by the GGF Secretariat and will be made

available upon request. The GFSG may also direct that a summary of the results of any such attempt be included in any GGF document that the GFSG believes is affected by such claimed rights.

3.4 Determination of Reasonable and Non-Discriminatory Terms

- 3.4.1 Each Contributor agrees that to the extent that patent claims licensable by the Contributor are necessarily infringed by the use or sale of technologies implemented by the Contributor's Contribution to a GGF Document, Contributor will grant to any requesting party, under reasonable and non-discriminatory terms, a non-exclusive, worldwide, perpetual license under such patent claims, with the rights to make, use, sell, offer to sell, and import otherwise infringing technologies. Nothing in this Section 3.4.1 shall act to prevent a participant from licensing such patent claims on terms more favorable (e.g., royalty-free) than those required hereunder. The grant of a royalty-free license in exchange for a reciprocal license of the same scope in patent claims licensable by a licensee shall be deemed more favorable, and consistent with requirements of this Section 3.4.1. Any more favorable license terms will be posted at the GGF website.
- 3.4.2 The GFSG will not make any explicit determination that the assurance of reasonable and non-discriminatory terms for the implementation of any recommendation has been fulfilled in practice. It will instead use the normal requirements for the advancement of a GGF document (as outlined in [GFD-C.1]) to verify that the terms for use are reasonable. If the two unrelated implementations of the documents that are required to advance from Proposed Recommendation to Recommendation have been produced by different organizations or individuals, or if the "significant implementation and successful operational experience" required to advance from Proposed Recommendation to Recommendation has been achieved, the assumption is that the terms must be reasonable and to some degree, non-discriminatory. This assumption may be challenged during the open comment period (as outlined in [GFD-C.1]).

3.5 Notices

The following Intellectual Property Rights (IPR) notice shall be included in all documents:

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The GGF invites any interested party to bring to its attention any copyrights, patents or patent applications, or other proprietary rights which may cover technology that may be required to practice this recommendation. Please address the information to the GGF Executive Director.

Explicit statements about IPR should not be included in the document. Authors should instead provide the GGF secretariat with any explicit statements or potentially relevant claims.

3.6 Entire Understanding

These GGF IP Policies are the complete and exclusive statement of the policies of the GGF concerning intellectual property rights. These GGF IP Policies supersede all prior policies of the GGF concerning intellectual property as well as all other GGF communications, proposals, memoranda of understanding, or agreements, oral or written, relating to the subject matter hereof. These GGF IP Policies may only be amended via the GGF document process as outlined in [GFD-C.1] using a Community Practice document.

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References

- [RFC-2026] Bradner, S., "The Internet Standards Process – Revision 3," RFC 2026, October 1996.
- [GFD-C.1] Catlett, C., "Global Grid Forum Documents and Recommendations: Process and Requirements," GFD-C.1, April 2002.