

BYLAWS of the X.Org Foundation

November 14, 2013

BE IT ENACTED AND IT IS HEREBY ENACTED as a By-law of the X.Org Foundation (hereinafter called "X.Org") as follows:

Article 0 PURPOSE

The purpose of the X.Org Foundation shall be to:

- (i) research, develop, support, organize, administrate, standardize, promote, and defend a free and open accelerated graphics stack. This includes, but is not limited to, the following projects: DRM, Mesa, Wayland and the X Window System),
- (ii) support, educate, organize and participate in the community of developers of this graphics stack, and
- (iii) support and educate the general community of users of this graphics stack.

Article 1 INTERPRETATION

1.1. Definitions

In this Article and all other Articles of these By-laws, unless the context otherwise requires:

- (i) "Act" means the National Cooperative Research and Production Act of 1993 of the United States and any Act that may hereafter be substituted therefore, as from time to time amended;
- (ii) "Foundation" means the X.Org Foundation;
- (iii) Director means a member that has been elected to serve on the Board of Directors;
- (iv) "Board" means the Board of Directors of X.Org;
- (v) "By-laws" means the By-laws of X.Org, as amended and in force from time to time;
- (vi) Officer means a Member that has been appointed by the Board to serve in the role of an Officer as defined in these By-laws;
- (vii) "Equipment" means such equipment as may be needed from time to time to operate and extend X.Org and which is an asset owned by X.Org;
- (viii) Member means an individual who has duly executed a Membership Agreement and is in good standing; and
- (ix) "Membership Agreement" means the X.Org Foundation Membership Agreement, as amended and in force from time to time.

1.2. Number

In this Article and all other Articles of these By-laws, unless the context otherwise requires:

- (i) words importing the singular number include the plural and vice-versa;
- (ii) words importing the masculine gender include the feminine and neuter genders; and
- (iii) any reference to a percentage of Members or Directors for quorum and other voting purposes shall mean the smallest whole number that is not less than the relevant percentage of Members or Directors indicated.

1.3. Notices

In this Article, and all other Articles of these By-laws, unless the context otherwise requires:

- (i) Any notice (which term includes any communication or document) to be given, sent, delivered or served pursuant to the Act, the By-laws or otherwise to a Member shall be sufficiently given if sent via e-mail by X.Org to the last known electronic address or if delivered to his last address as recorded in the books of X.Org or if mailed by prepaid ordinary mail or airmail addressed to him at his last address as recorded in the books of X.Org or if sent to him at his said address by means of facsimile or recorded communication. The Secretary may change the address on X.Org's books of any Member with any information believed by him to be reliable. A notice so delivered shall be deemed to have been received when it is delivered at the address aforesaid. A notice sent by any means of e-mail, facsimile or recorded communication shall be deemed to have been given when sent and a notice so mailed by prepaid ordinary mail or airmail shall be deemed to be received ten business days after mailing;
- (ii) Email shall be considered the default form of notice for X.Org. Other forms as described above may be used at the discretion of the Secretary;
- (iii) In computing the date when notice must be given under any provision requiring a specified number of days' notice of any meeting or other event, the date of giving the notice shall be included and the date of the meeting or other event shall be excluded;
- (iv) In computing the hour when notice must be given under any provision requiring a specified number of hours' notice of any meeting or other event, the hour of giving the notice shall be included and the hour of the meeting or other event shall be excluded;
- (v) The accidental omission to give any notice to any member or the non-receipt of any error in any notice, or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon; and
- (vi) Any member may waive any notice required to be given to him under any provision of the Act or the By-laws and such waiver, whether given before or after the meeting or other event of which notice is required to be given, shall cure any default in giving such notice.

Article 2

MEMBERS

2.1. Membership

The Members of X.Org shall be designated as Members in good standing who have executed a Membership Agreement and who have elected to actively participate in the activities of X.Org.

2.2. Membership Agreement

Additional requirements and rights of membership are specified in the Membership Agreement. The Membership Agreement may be repealed or amended as defined by the Special Voting Requirements in section [3.8](#).

2.3. Relationship to Membership Agreement

Where any provision of these By-laws is found to be in contradiction to the Membership Agreement, these By-laws will be held to be the correct interpretation for the transaction of X.Org affairs.

2.4. Qualifications for Membership

In order to qualify as a Member, a person must, at the time of their application and during the tenure of their membership:

- (i) be actively involved in the activities relating to the technologies of X.Org, as set forth in the Membership Agreement, and, who, in the consideration of the Board, supports the objects, purposes, aims and objectives of X.Org; and
- (ii) maintain current and accurate contact information as may be needed for delivery of Notices.

2.5. Member Declaration of Affiliations

It shall be the duty of all individual Members at the time of application for membership, and at any time there is a change of circumstances for the Member during their membership in X.Org, to declare any relevant affiliation to a company or other institution.

2.6. Notification

The Secretary shall promptly notify each member upon his admission to membership in X.Org.

2.7. Transfer of Membership

Membership in X.Org is not transferable and ceases upon the death or withdrawal of the Member.

2.8. Revocation of Membership

Any Member may be expelled from X.Org for good cause by a seventy-five percent (75%) majority vote of the Board. Good cause shall be determined by the board and shall include, among other causes, the following:

- (i) a breach of any of the terms and conditions of the By-laws or any agreement with X.Org, which the Member in question is a party to or bound by;
- (ii) a failure to observe any of the rules or regulations of X.Org or the operational requirements of X.Org and after having received 30 days' notice of such failure, the failure to rectify his behavior or procedures to the satisfaction of the Board;
- (iii) a finding by the Board that the Member in question permitted or tolerated a criminal act by its or his agents or employees involving the use or abuse of X.Org or the Equipment;
- (iv) a failure to carry out such duties or responsibilities as are necessary and are his responsibility and within his powers for the maintenance or preservation of X.Org; and

- (v) a finding by the Board that the Member supplied false information when executing the Membership Agreement.

No resolution for expulsion shall be put before the Board until after the Member in question has been notified of the cause and afforded an opportunity for a hearing before the Board. The Board shall notify the Member in question of the reason for the expulsion and of the time and place of the meeting of the Board at which the Member will be heard. Such notice shall be given at least two (2) weeks prior to such meeting, and the meeting will be limited in attendance to only the Board and the Member should the Member request it. The Secretary of the Board will publish to the Members a summary of the Meeting and any Resolutions voted upon.

2.9. Resignation of Membership

A Member's resignation will be effective upon delivery of a written letter or electronic communication of resignation to the Secretary of X.Org.

2.10. Termination of Membership

Membership in X.Org terminates automatically upon the happening of any of the following events:

- (i) If the Member fails to renew his membership within 30 days of receiving notification requesting renewal;
- (ii) If the Member is expelled from X.Org pursuant to the By-laws; or
- (iii) If the Member resigns, following the process described above, as a Member of X.Org.

2.11. Liability of Terminated Members

A Member whose membership is terminated:

- (i) Shall have no further rights after the effective date of termination; and
- (ii) Shall deliver any Equipment or other assets in his possession and transfer title to any such Equipment or other assets free of encumbrance, to such party or parties as are designated in accordance with a direction from the Secretary and shall discharge in full his share of the outstanding liabilities of X.Org as of the date of termination.

2.12. Member Declaration of Interest

It shall be the duty of every Member who is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or proposed arrangement with X.Org, to declare such interest and to refrain from voting in respect of the contract or arrangement or proposed contract or proposed arrangement.

Article 3

MEMBERSHIP MEETINGS

3.1. Annual Meeting

An annual meeting of the Members shall be held each year at a time, place and date determined by the Members, for the purpose of:

- (i) Receiving the reports and statements required by the Act and the By-laws to be placed before the Members at an annual meeting; and
- (ii) Transacting any other business properly brought before the meeting.

3.2. Special Meetings

The Board may at any time call a special meeting of the Members for the transaction of any business, the special nature of which is specified in the notice calling the meeting.

3.3. Notice of Meetings

Notice of the time, place and date of meetings of the Members and the specific nature of the business to be transacted shall be given at least 21 days before the date of the meeting to each Member.

3.4. Meetings without Notice

A meeting of the Members may be held at any time and place without notice if all the Members entitled to vote thereat are present in person or waive notice of, or otherwise consent to, such meeting being held, and at such meeting any matters may be considered which may be transacted at a meeting of the Members.

3.5. Persons Entitled to Participate

The only persons entitled to participate in a meeting of the Members shall be Members and others who, although not entitled to vote, are entitled or required under any provision of the Act or By-laws to participate in the meeting. Any other individual may be allowed to participate only on the invitation of the Board of X.Org.

3.6. Right to Vote

At any meeting of the Members, every Member shall be entitled to vote.

3.7. Voting Generally

All questions properly coming before a meeting of the Members shall be decided by a majority of all eligible votes cast. For the purposes of calculating percentages in votes, votes of "abstention" will be excluded.

3.8. Special Voting Requirements

No resolution of the Board or of the Members dealing with any of the following matters shall be effective unless and until such resolution is approved by a two-thirds majority vote of the Members:

- (i) any amendment or supplement of the By-laws;
- (ii) any action which may lead to or result in a material change in the nature of the business of X.Org;
- (iii) the entering into of an amalgamation, merger or consolidation with any other corporate body;
- (iv) the entering into of any agreement other than in the ordinary course of X.Org's business;
- (v) the distribution of substantially all of X.Org's assets;
- (vi) the termination or dissolution of X.Org; or
- (vii) any amendment or supplement of the Membership Agreement.

3.9. Conduct of Meetings

X.Org recognizes that its Members are located throughout the world, and as such the holding of meetings in a single physical location attended by a significant number of the Members is impractical. For the purposes of these By-Laws, a Meeting shall be considered to be a fixed period of time in which the business of X.Org and its Members is conducted. Communication at the meeting shall be conducted electronically using, but not limited to: telephone, email, Internet Relay Chat, message forums and electronic audio or video transmissions.

- (i) Motions to be considered at a Meeting, including all supporting documentation, shall be presented to the Secretary at least 72 hours prior to the meeting. The Secretary shall present all motions, including the online location of all supporting documentation, to be considered to the Members at least 48 hours prior to the meeting.
- (ii) Discussion of a motion shall be open for at least 72 hours following the presentation of the motion to the Members to ensure all Members have adequate opportunity to participate. Discussion may continue beyond 72 hours. Discussion of a motion shall be closed by the Secretary at his discretion after all relevant discussions has concluded. The discussion shall be considered closed 24 hours after the Secretary's declaration if no reasonable objections are raised.
- (iii) Voting on motions shall be performed electronically. Ballots shall remain open for at least 24 hours. The beginning and ending times of the ballot shall be clearly communicated to the Members at least 24 hours prior to the opening of the ballot. Results of a ballot shall be communicated by the Secretary using all forms of communications that were in use for the Meeting as is practical as determined by the Board.

Meetings may be held in other forms or schedules if all Members consent.

3.10. Informal Gatherings

Decisions made at informal gatherings shall be non-binding until ratified by a motion at an Annual or Special meeting of the Members.

3.11. Quorum

A quorum for the transaction of business at any meeting of the Members shall be twenty-five percent (25%) of the Members entitled to vote thereat. Quorum shall be calculated separately for each motion that is put to a vote of the Members.

3.12. Adjournment

Any meeting of the Members, whether or not a quorum is present, may be adjourned from time to time and from place to place by the affirmative vote of a majority of the Members present.

Article 4

BOARD OF DIRECTORS AND OFFICERS

4.1. Powers

The Board operates within the boundaries given by the legal entity that represents the Foundation, SPI¹.

¹Software in the Public Interest: <http://www.spi-inc.org/>

The Board shall possess and may exercise (subject to limitations imposed by the Act, SPI or otherwise by law) all the powers and responsibilities required to conduct the business and affairs of X.Org. Without limiting the generality of the foregoing, the Board shall have the authority to:

- (i) Establish, empower and dissolve committees and working groups as it sees fit for the purpose of conducting the business and affairs of X.Org;
- (ii) promulgate such rules and regulations as may be necessary or desirable for the operation of X.Org;
- (iii) be responsible for the enhancement of the public image of X.Org;
- (iv) determine the programs and activities of X.Org within the purposes set forth in Article 0;
- (v) protect the use of the X.Org name and associated logos;
- (vi) ensure effective organizational planning for X.Org;
- (vii) conduct annual elections for the representatives of the Board of Directors;
- (viii) act as a court of appeal for any issues raised by the Membership of X.Org; and
- (ix) assess its own annual performance and report the results of the assessment to the Members.

Some powers are held by SPI only and shall not be possessed nor exercised by the Board. These powers include:

- (i) Holding funds or intangible assets (trademarks or other Intellectual Property);
- (ii) accepting donations or assets valued at over \$300;
- (iii) transferring funds or assets without the consent of SPI; and
- (iv) signing contracts (see 6.6).

SPI: ARE THOSE POTENTIAL SERVICES OR REQUIREMENTS?

4.2. Constitution

The Board shall consist of no more than eight (8) Directors, who are current Members, elected by the Membership. No more than two (2) Members who have declared company affiliations with the same company or institution as required by Section 4 of Article 2 may serve as Directors at any given time.

4.3. Annual Elections

Annual elections will be held at a Meeting of the Members to elect Directors so as to bring the total number of Directors to eight (8). The four (4) Members receiving the highest vote totals from the annual election will be considered an elected Director and each such Director will hold office for a term of two (2) years. If more than four (4) Directors are required to bring the total number of Directors to eight (8), then each of the Members receiving the next highest vote totals from the annual election required to bring the total number of Directors to eight (8) will be considered an elected Director and each such Director will hold office for a term of one (1) year.

4.4. Special Elections

Special elections are defined to be the same as Annual Elections, with the following exceptions:

- (i) Special Elections may be held at any time when a vacancy exists unless the time of the Special election would fall within the one (1) months prior to the Annual Election; and
- (ii) Regardless of the number of Directors required to bring the total number of Directors to eight (8), the Director elected in a Special Election will hold office for a term of time until the next Annual Election.

4.5. Resignation

A Director may resign at any time by delivering notice to the Board or to the Secretary of X.Org in either electronic or written form. The resignation is deemed to take effect immediately upon receipt by the Board or Secretary of X.Org.

4.6. Terminations

At any time and from time to time, the Board may remove any Director with a two-thirds (2/3) vote of the Directors. The Director who is the subject of the removal action shall be entitled to participate in the meeting where the vote shall take place, but shall not be entitled to vote on such an action or be counted as a voting member of the Board when calculating the two-thirds (2/3) vote. When multiple Directors are the subject of a removal action, each will be considered separately and each vote to remove a Director shall be a separate vote. The termination of a Director may be with or without cause.

4.7. Vacancy

Vacancies of Director positions may arise from time to time and may be due to death, resignation, termination, completion of elected term or lack of electable candidates. Vacancies may be filled by Annual Elections or Special Elections of Directors. In the event the board has 4 or fewer Directors, no new business may be conducted until the vacancies are filled. The board may continue to conduct business, however, as necessary to satisfy existing obligations. If at any time, subject to the limits in 4.4.(i), there exists two (2) or more vacancies of Director positions on the Board, a Special Election shall be held.

4.8. Procedures

The Board shall have power to fix its own rules of procedure from time to time. The Board shall keep minutes of its meetings in which shall be recorded all action taken by it, and at least a summary thereof shall be submitted to the Members at least annually.

4.9. Quorum

No business may be transacted by the Board except at a meeting of the directors at which a quorum of the board is present. A Quorum of the board shall be defined as a majority of the full Board of Directors.

4.10. Annual Meeting

An Annual Meeting of the Board shall take place at a time and place designated by the Board. The purpose of the Annual Meeting shall be to conduct the business of the organization, including but not limited to: appointing Officers and organizing the Annual Election of Directors.

4.11. Special Meetings

Special Meetings of the Board shall take place as deemed necessary by the majority of the Directors. The purpose of such meetings shall be to conduct the business of the organization.

4.12. Participation in Meetings

Annual and Special Meetings of the Board may be held in person or by such means of telephone, electronic or other communication facilities as permit all persons participating in a meeting to communicate with each other simultaneously and instantaneously, and persons participating in such a meeting by such means shall be deemed present at that meeting.

4.13. Notice of Meetings

Notice of Annual or Special Meetings of the Board held in person shall be delivered to the Directors by the Secretary no less than one (1) month prior to the meeting. Notice of Annual or Special Meetings of the Board held by any other means than in person as described in Section 12 of Article 4 shall be delivered to the Directors by the Secretary no less than twenty-four (24) hours prior to the meeting.

4.14. Voting

Unless otherwise required by these By-laws, questions arising at any meeting of the Board shall be decided by a majority vote of the full Board of Directors. Each Board member is authorized to exercise one vote. At all meetings of the Board, a question shall be resolved by poll only if required by the Secretary or requested by any Board member. A declaration by the Secretary that a resolution has been carried and an entry to that effect in the minutes is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favor of or against the resolution.

4.15. Other Members Present

Each Member shall be entitled to speak but not to vote at any meeting of the Board at which that person is present. Procedures for inviting of Members to appear at any meeting of the Board shall be determined by resolution of the Board.

4.16. Committees

The Board from time to time may appoint such committee or committees as it deems necessary or appropriate for such purposes and with such powers as it shall see fit. The Chair of any such committee or committees shall be a Member of X.Org. Any such committee may formulate its own rules of procedure, subject to the approval, regulations or directions such as the Board may from time to time make.

4.17. Remuneration

The Board of Directors and Officers of X.org shall receive no compensation, either directly or indirectly, for acting as such and shall not receive, either directly or indirectly, any profit from their office. Expenses arising from normal Director or Officer duties shall be considered for reimbursement by the Board.

4.18. Requirements

The Board shall produce the following statements to the Members annually within sixty (60) days of the end of the fiscal year or as required by the Act or other law:

- (i) Annual financial report, prepared by the Treasurer and approved by the Board; and
- (ii) Annual State of the Organization report, prepared by the Secretary and approved by the Board.

4.19. Officers

The offices of Secretary of X.Org and Treasurer of X.Org shall be required to exist at all times. Additional offices may be created or eliminated as needed by resolution of the Board. The Officers holding each office shall be appointed from the current Members of X.Org and approved by resolution of the Board at its Annual Meeting or as required when office vacancies exist. Officers will serve for a term of one (1) year or until the next Annual Meeting of the Board, whichever comes first.

4.20. Leaving office

An Officer may leave his office for a number of reasons, including but not limited to:

- (i) An Officer may resign at any time by delivering notice to the Board in either electronic or written form. The resignation is deemed to take effect immediately upon receipt by the Board;
- (ii) At any time and from time to time, the Board may removed any officer, with or without cause, by a majority vote. The Officer shall be entitled to participate in the discussion of the reasons for removal. If the officer is also a Director, he shall not be entitled to vote on the removal action or be counted as a voting member of the Board when calculating the majority vote; and
- (iii) An office, other than Secretary or Treasurer, may be eliminated by resolution of the Board and the Officer holding the eliminated position will be required to leave his office.

Upon leaving office, the Officer shall transfer any Equipment, Records or other assets of X.Org required to perform his duties to such party or parties as are designated by the Board.

4.21. Duties of Officers

The duties of these officers shall be carried out in accordance with the procedures described in these bylaws and other resolutions enacted by the board.

The duties of Secretary shall include, but not be limited to:

- (i) keeping the minutes and records of X.Org in one or more books provided for that purpose;
- (ii) seeing that all notices are duly given and served to Members of X.Org;
- (iii) be the official custodian of the records and seal of X.Org;
- (iv) maintain and keep the Board apprised of a list of all legal, contractual and fiduciary obligations of X.Org;
- (v) submitting to the Board any communications or notifications which are addressed to the Secretary of X.Org;
- (vi) giving due notice of all meetings as directed by these By-laws;
- (vii) preparing an annual report on the State of the Organization; and
- (viii) carry out other such duties incident to his office as the Board may assign.

The duties of the Treasurer shall include, but not limited to:

- (i) receiving and giving receipts for all monies due or belonging to X.Org as a proxy between the treasurer of SPI and the Board;
- (ii) accounting for disbursement of the monies of X.Org and record such information in the books provided for that purpose;
- (iii) rendering at regular intervals such as the Board shall determine a written account of the finances of X.Org;
- (iv) making available the books at all times for inspection by the Board;
- (v) tracking the state of every monetary transaction to make sure they have been completed successfully by SPI; and
- (vi) carrying out other such duties incident to his office as the Board may assign.

Article 5

PROTECTION OF DIRECTORS AND OFFICERS

SPI: How should we change this article? Do you have any policy on this topic?

“SPI has access to legal counsel which the board may consult on behalf of the project, at the discretion of the board.”

To the fullest extent permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, a director of the corporation shall not be personally liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director.

5.1. Right to Indemnification

Each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was a Director or Officer of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, shall be entitled to indemnification against expenses (including attorneys’ fees), judgments, fines, and amounts paid in settlement to the fullest extent now or hereafter permitted by applicable law as long as such person acted in good faith and in a manner that such person reasonably believed to be in or not be opposed to the best interests of the corporation provided, however, that the corporation shall indemnify any such person seeking indemnity in connection with an action, suit or proceeding (or part thereof) initiated by such person only if such action, suit or proceeding (or part thereof) was authorized by the Board of Directors.

5.2. Advance Payment of Expenses

Expenses (including reasonable attorneys’ fees) incurred by any person who is or was an Officer, Director of the corporation or who is or was serving at the request of the corporation as an officer or director of another corporation, partnership, joint venture, trust or other enterprise, in defending any civil, criminal, administrative or investigative action, suit or proceeding, shall be paid by the Foundation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it is ultimately determined that he or she is not entitled under applicable law to be indemnified by the corporation.

Article 6

TRANSACTION OF THE AFFAIRS OF X.ORG

6.1. Financial Year

The financial year of X.Org shall end on the 31st day of December in each year.

6.2. Checks, Drafts, Notes, etc

All checks, drafts or orders for the payment of money and all notes and acceptances and bills of exchange above a minimum set by a resolution of the Board shall be approved by the Board.

6.3. Books and Records

The Board shall see that all necessary books and records of X.Org required by the By-laws or by any applicable law are regularly and properly kept.

6.4. Banking Arrangements

The Board shall designate, by resolution, the following items pertaining to the banking arrangements of X.Org:

- (i) the monies of X.Org shall be deposited to and drawn from the treasurer of SPI who reserves himself the right to refuse a transaction if said transaction doesn't follow the rules set by SPI;
- (ii) the monies shall be drawn from SPI only by check or other order for payment after the approval of the Board of Directors;

6.5. Borrowing by X.Org

Subject to the limitations set out in the Act or in applicable law or in the By-laws, neither the Directors nor the Officers of X.Org may borrow money on the credit of X.Org.

SPI: I guess this is also not allowed if we were to merge with you?

6.6. Entering into Contracts

The Board shall approve, by resolution, any and all contracts entered into by X.Org. To avoid potential conflict of interests, any Contract entered into by X.Org in which a Member has an interest shall have fair and reasonable terms and conditions equivalent to such terms and conditions as would exist if the Contract were being entered into with a non-Member. SPI is however the only entity habilitated to sign contracts, when mandated by the Board.

SPI: Is this true? Does the board requires to contact you to sign a contract or do you provide that as a non-mandatory service?

6.7. Non-Profit Statement

X.Org is organized exclusively for scientific and educational purposes within the meaning of Section 501(c)(3) of the 1986 Internal Revenue Code.

Article 7 AMENDMENT

These By-law may be altered, amended or repealed by an affirmative vote of at least two-thirds (2/3) of the Members of X.Org.

ENACTED as a By-law by the Members of X.Org at a meeting duly called and regularly held and at which a quorum was present on the 22nd September 2003.