

OPTICAL INTERNETWORKING FORUM (OIF)
INTELLECTUAL PROPERTY RIGHTS (IPR) POLICY STATEMENT

Updated January 7, 2003

1. DEFINITIONS

(a) “Implementation Agreement(s)” shall mean specifications, protocols, system architectures and other similar guidelines related to optical networking technologies that are developed, and adopted by the OIF and published or otherwise made available to the public by the OIF.

(b) “Intellectual Property Rights” (IPR) shall mean copyrights, patents or any similar intellectual property rights which have been registered with or issued by any governmental agency, including any pending applications therefor.

(c) “Member(s)” shall mean any member of OIF (including any entity which controls, is controlled by, or is under common control with, an OIF member), as defined in OIF’s Bylaws, whether a Principal Member, or otherwise.

(d) “Participant(s)” shall mean all persons employed or otherwise engaged by an OIF Member who, in connection with such Member’s consideration of a proposed Implementation Agreement, (i) have been granted access to OIF’s secure website pertaining to such proposed Implementation Agreement, and/or (ii) have actively participated in the review of Technical Contributions, Technical Reference Documents, or other OIF documents relating to such proposed Implementation Agreement, including attending meetings related thereto.

(e) “Principal Member(s)” shall mean any Principal Member of OIF, as defined in OIF’s Bylaws.

(f) “Technical Contribution(s)” shall mean the approved OIF procedure, currently in effect, by which Members submit technical proposals for inclusion, all or in part, in Implementation Agreements. Technical Contributions may or may not contain IPR.

(g) “Technical Reference Document(s)” shall mean any technical information submitted by OIF Members that is for reference purposes only. The content of Technical Reference Documents is not under any circumstances considered for inclusion in Implementation Agreements.

2. BACKGROUND

(a) The OIF is an open membership organization committed to encouraging voluntary, widespread industry cooperation leading to the development, publication and widespread dissemination of information relating to open, competitive, voluntary and interoperable optical networking technologies. The OIF is a California Nonprofit Mutual Benefit Corporation. The Board of the OIF is authorized to adopt and modify IPR policies from time to time in the interest of the Forum as a whole. Comments or questions about these policies should be directed to the Forum’s Board of Directors through the Executive Director.

(b) These policies are designed to maximize the likelihood of widespread adoption of Implementation Agreements by the optical networking industry in general, including end-users and national and international standards setting organizations. Pursuant to the OIF Bylaws, OIF policies are also designed to protect the legitimate IPR of Members and to facilitate the activities of the Forum. Moreover, these policies are designed to comply with applicable law, including federal antitrust law as enforced by the United States Federal Trade Commission.

3. ACKNOWLEDGMENT OF IPR

IPR are recognized and enforced worldwide, and in certain situations IPR holders may be able to limit the use of optical networking technologies. In those situations, IPR holders, OIF Members and nonmembers alike, should be adequately and fairly rewarded for use of their IPR. In some cases, use or implementation of Implementation Agreements may require the use of IPR of Members or nonmembers. Except as set forth below, the OIF cannot assure its Members or nonmembers that implementation or use of an Implementation Agreement will not be impacted by IPR belonging to a third party.

4. AFFIRMATIVE IPR DISCLOSURE OBLIGATIONS OF OIF MEMBERS

(a) Obligations at Time of Contribution. Each and every time Participants submit a Technical Contribution for consideration by the OIF, such Participants shall be deemed to have read and reviewed the OIF IPR Policy, and shall at such time disclose in writing to OIF the following:

(i) Existence of Required IPR. Whether, to the best of their knowledge, they are aware of the existence of any IPR held by their Member organization which would be required in order to practice under such contribution;

(ii) Willingness to License. Whether such Member is willing to license OIF Members and others to make implementations under any Implementation Agreement incorporating such contribution; and

(iii) Terms of License. Whether such licenses will be made available, either without compensation or with compensation on reasonable and nondiscriminatory terms and conditions.

(b) Obligations at Time of Vote. Upon each and every occasion calling for a straw vote of Principal Members relating to the adoption of all or any portion of a proposed Implementation Agreement (a “Vote”), each Principal Member shall disclose to OIF in writing (and not later than two (2) business days prior to the closing of such Vote) whether, to the best of the knowledge of its Participants, there exists any IPR which such Member holds which would be required in order to practice under such proposed Implementation Agreement.

(i) Where No Disclosure Occurs. Absent a timely disclosure by a Principal Member, it shall automatically be deemed at the time of said Vote to have made the representations and undertakings set forth in Paragraphs 5(a), 5(b)(i) and 5(c) hereof.

(ii) Where Disclosure Occurs. Alternatively, should a Principal Member timely make a disclosure of its IPR to OIF in connection with a Vote, such Member shall automatically be deemed to have made the representations and undertakings set forth in Paragraphs 5(a), 5(b)(ii) and 5(c) hereof.

(iii) Election Not To License. Notwithstanding the provisions of Par. 4(b) and Par. 5 hereof, a Member may, at the time of Vote (but not later than two (2) business days prior to the closing of such Vote), provide written notice to OIF of such Member’s election, with respect to the subject matter of such Vote, to not be subject to any or all of the licensing provisions set forth in Paragraphs 5(b)(ii) and 5(c) hereof. Absent a Member’s providing such timely notice, the relevant provisions of Paragraph 5 hereof shall apply.

5. OIF MEMBER REPRESENTATIONS APPLICABLE AT TIME OF VOTE

At the time of any Vote, each Member shall automatically be deemed to have made the following representations and undertakings:

(a) That Member has received and reviewed the Intellectual Property Rights (IPR) Policy Statement of the OIF currently in effect;

(b) (i) That, to the best of the Member's Participants' knowledge, there is no IPR owned by Member that would be required in order to practice under the OIF Technical Contribution concurrently being submitted for a Vote; or

(ii) That Member owns IPR which would be required in order to practice under the OIF Technical Contribution concurrently being submitted for a Vote, and that Member is prepared to make licenses available to any applicant (except as prohibited by law, or prevented because Member does not have the right to so license) such IPR (including, without limitation, any copyrights, patents or any applications pending therefor), for the purpose of making, selling, offering to sell, importing, distributing or using implementations of Implementation Agreements containing such IPR, either without compensation or with compensation on reasonable and nondiscriminatory terms and conditions; and

(c) That Member agrees that if it is subsequently determined that Member at the time of its Vote held IPR which is required in order to practice under an Implementation Agreement incorporating the OIF Technical Contribution then being submitted for such Vote, Member will make licenses available to any applicant, (except as prohibited by law, or prevented because Member does not have the right to so license) such IPR (including, without limitation, any copyrights, patents or any applications pending therefor) for the purpose of manufacturing, selling, distributing, or using implementations of Implementation Agreements containing such IPR, either without compensation or with compensation under reasonable and nondiscriminatory terms and conditions.

6. FAIR LICENSING OBLIGATIONS OF OIF MEMBERS WITH RESPECT TO

TECHNICAL CONTRIBUTIONS

(a) Wherever possible, the OIF, on behalf of its Members, will facilitate obtaining general and specific licensing information from Members or other persons to further the interests of the Forum.

(b) In order to promote open, efficient and useful optical networking technology, OIF Members who make Technical Contribution(s) to the OIF shall, with respect to IPR that they own which is required in order to practice under that Member's Technical Contribution(s), fully and timely comply with the provisions of Paragraph 4(a) hereof. Negotiations between IPR holders and potential licensees are left to the parties concerned and performed outside the OIF.

(c) In the event a Member timely (as provided in Paragraph 4(b) hereof) elects not to make licenses available with respect to IPR which is required in order to practice under its Technical Contribution, the OIF shall attempt to develop and adopt Implementation Agreements the practice under which does not require such IPR or, if this is not reasonably possible, Implementation Agreements may include references to nonlicensed IPR of which the OIF is aware that may cover, all or in part, the respective Implementation Agreement and statements as to the IPR holders' licensing policies, if known. Such references will be included in the notice described in Paragraph 6(d) below by stating: "attention is called to the possibility that"

(d) The following notice shall appear in all Implementation Agreement documents: "Note: Attention is called to the possibility that use or implementation of this OIF Implementation Agreement may require use of subject matter covered by IPR. By publication of this Implementation Agreement, no position is taken with respect to the existence or validity of any IPR in connection herewith. The OIF shall not be responsible for identifying all IPR which

is required in order to practice under an OIF Implementation Agreement, or for conducting inquiries into the legal validity or scope of such IPR that is brought to its attention.”

(e) The OIF is not responsible for the protection of any intellectual property of any Member. Submissions of technical contributions in any form may be subject to public disclosure alone or along with other technical contributions made while participating in OIF Working Groups or other activities by Members. Each Member is responsible for the protection of its intellectual property pertaining to any of its technical contributions to the OIF.

7. BOARD OF DIRECTORS POWER TO MODIFY IPR POLICY

The OIF Board of Directors may from time to time modify this IPR Policy Statement, and shall create a method to allow Members to provide their input. The OIF Board of Directors shall take steps to disseminate its policies to all Members.