



## Open Collaboration Principles

### *Free & Open Collaboration Principles - Purpose*

This “Free Public Commons” model represents just one type of formal collaboration that can be used when appropriate and will co-exist with other models, such as sponsored research, consortia and other types of university/industry collaborations, where the results are intended to be proprietary or publicly disseminated. This free & open collaboration principles document is the major underpinning of a policy for handling intellectual property rights arising from software related collaborations between industry and universities under circumstances where the participants intend for the results to be made part of a royalty free public commons (a body of knowledge that can be freely used by the public). The nature of the public commons collaboration, including its purpose, scope and rules of operation is generally decided by the founding participants. Some collaboration projects may involve a small group of participants, perhaps even one company and one university. Other collaboration projects may involve larger groups or may be part of ongoing managed projects (e.g. Linux or standards bodies).

### *Free & Open Collaboration Principles*

A Free Public Commons collaboration between industry and academic institutions should have the following attributes:

#### **I. Fee Free, Community Prepared, Publicly Shared**

The intellectual property created in the collaboration must be made available for commercial and academic use by every member of the public free of charge for use in open source software, software related industry standards, software interoperability and other publicly available programs as may be agreed to by the collaborating parties (Free & Open Collaboration Projects)<sup>1</sup>.

If a participant<sup>2</sup> in a Free & Open Collaboration Project owns or controls pre-existing patents or patent applications necessary to implement the contribution to the software related standard or the contributed open-source software in the Free Public Commons, to the extent it has the power<sup>3</sup>, it will make the patents or patent applications available to the public without charge for implementing such standard or software<sup>4</sup>. With respect to open-source software and open standards bodies having rules that permit<sup>5</sup>, this obligation can be satisfied by the participant distributing the software under an appropriate OSI compliant open-source license. To the extent it has the power, the participant will also make background copyrights in any of its contributions to the commons available to the public without charge for use in the commons. To the extent that a participant knows that it can not make background copyrights and necessary patents or patent applications available to the public without charge, it will timely inform the other participants<sup>6</sup>.

#### **II. Rules to Protect Both the Public and the Participant<sup>7</sup>**

A member of the public’s rights to use the intellectual property may be terminated if they use their own intellectual property or assist other parties to attack the implementation of the Public Commons or the Open Collaboration Project itself<sup>8</sup>.

Participants in the collaboration need not relinquish ownership of their intellectual property rights, nor will they be restricted from transferring ownership as long as the public’s rights are preserved in the transfer<sup>9</sup>.



### ***Footnotes (Parties, Participants)***

1. The scope of the public commons is up to the participants, although it is contemplated that most often the commons be specifically directed to open source, industry standards and interoperability projects.
  - a. The commitment to make the intellectual property available may be accomplished in many ways such as by a publication, a mutual non-assert pledge with the public as a third party beneficiary, dedication of patents to the public, not filing patents, a license grant or by transfer to a third party such as an open trust.
  - b. “Free of charge” means no royalties, upfront payments or required reimbursements of any kind.
  - c. “Every member of the public” means that no one can be denied these rights (except as may be required by law) including competitors.
  - d. “open source” means software distributed under an OSI compliant license as described at <http://www.opensource.org/docs/definition.php>
2. Participant means both the persons actively involved in the project and the institution that employs or contracts those persons or otherwise assigns the persons to the project (e.g. an institution that assigns its students). (a) With respect to open source, no institutional participant is obligated to contribute code authored by a person outside the actual project team, however, ensuring that such code is not contributed or made part of the project is ultimately the responsibility of the institution who owns the code or employs the persons who propose to put the code into the project. (b) It is recognized that an institutional participant may not be able to commit rights to background intellectual property owned or controlled by an individual project member and that any such rights may need to be handled under a separate agreement with the individual.
3. In cases where a project is government funded there may be circumstances where the government may elect to take ownership of an invention if the participant does not file for patent protection. A participant is not deemed to “have the power” simply because they could have elected to file for patent protection but did not. Under such circumstances, a participant may not be able to grant rights in patents to which the government elects to take title. It is also recognized that it may be necessary for a participant to obtain the concurrence of a nonparticipating creator of intellectual property prior to making that intellectual property available to the public.
4. When collaboration is intended to generate input to an open standard or an open source project, background (preexisting) patent rights are required as to “necessary claims”. This is required for many open standards bodies and most Open Source Initiative (OSI) approved open source licenses. This principle is intended to ensure that where the intent of the collaboration is open source or open standards, the results can be used consistent with open source/open standards objectives. Background copyright licenses must be granted for all copyrightable materials actually contributed by the participant either directly or by agreement. For example, a participant may agree that program code that is a derivative of a pre-existing program will be provided to the commons, even though other participants are helping to write the code.
5. Rules that permit may include the right to provide a public reference implementation instead of a broader license.
6. Knowledge means personal knowledge of those directly involved with the execution of the agreement and persons actively participating in the project. This does not contemplate any duty to search for exceptions.
7. Additional rules may be established by the participants but should be limited in scope and number. Consideration should be given to the impact of additional rules on the number of parties willing to participate.
  - a. The right to use the intellectual property commercially is key to incenting the participation of commercial entities in these projects. Without a commercial use right, the number of commercial entities who would be willing to contribute to the commons may be greatly curtailed.
  - b. A required indemnification will limit the number of participants. No participant should have to indemnify another or a member of the public for use of the contribution – the collaborators are innovators and not insurers. Contributions are “AS IS”. To the extent permitted by law, a collaborator may require barring of damages against the collaborator from users of its contribution



8. This rule is intended to protect the commons itself. A member of the public should not be able to take advantage of intellectual property placed in the commons while at the same time using their own intellectual property to attack others for using the materials in the commons. Under this principle a person or institution getting a free license to practice a standard developed under the collaboration would lose that license if they asserted patents against someone for practicing the standard. **Note that the rights of a contributor to the commons cannot be terminated under this rule.**
  
9. The fact that the public will have rights to use the intellectual property resulting from the collaboration for certain purposes does not mean that the participant has to give up ownership and the rights associated with it (e.g. the right to sell the intellectual property or the right to license the intellectual property for royalties for use outside the scope of the rights granted to the public). As long as the public's rights continue, the participant is free to do with it what they choose. In cases where a project is government funded it is recognized that a participant is not obligated to take title and may not be able to grant ongoing rights to patents to which the government elects to take title.