

## Draft 30 March, 2020

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### Abstract

The W3C Patent Policy governs the handling of patents in the process of producing Web standards. The goal of this policy is to assure that Specifications produced under this policy can be implemented on a Royalty-Free (RF) basis.

### Status of This Document

This is a DRAFT for review and discussion purposes.

The English version of this policy is the only normative version.

#### 1. Overview

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Deleted: This is the 5 February 2004 version of the W3C Patent Policy, updated 1 August, 2017. This version incorporates

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Deleted: to be consistent with the 2017 Process. These updates were approved by the W3C Membership in July 2017. No substantive changes are made.

Deleted: This document has been reviewed by W3C Members and other interested parties and has been endorsed by the W3C Director as the W3C Patent Policy. It is a stable document and may be used as reference material or cited as a normative reference from another document. W3C's role in making this policy is to provide a stable policy for handling patent claims in the context of W3C Recommendations and to enhance the functionality and interoperability of the Web. This policy was produced by the

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Deleted: [W3C Patent Policy Overview](#)

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This patent policy describes:

1. licensing goals for W3C Specifications,
2. licensing obligations that Working Group participants will undertake as a condition of Working Group participation, along with means of excluding specific patents from those obligations
3. the definition of a W3C Royalty-Free license
4. disclosure rules for W3C Members
5. an exception handling process for situations in which the Royalty-Free status of a Specification, comes under question
6. definition of Essential Claims

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All numbered sections of this document (1-8), as well as hyperlinks to material within and outside of this document, are normative.

## 2. Licensing Goals for W3C Specifications,

In order to promote the widest adoption of Web standards, W3C seeks to develop Specifications, that can be implemented on a Royalty-Free (RF) basis. Subject to the conditions of this policy, W3C will not approve a Recommendation if it is aware that Essential Claims exist which are not available on Royalty-Free terms.

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To this end, Working Group charters will include a reference to this policy and a requirement that Specifications, produced by the Working Group will be implementable on an RF basis, to the best ability of the Working Group and the Consortium.

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For the purpose of this policy, "Specification" refers to a W3C technical report published on the Recommendation Track, see [PROCESS]. "Patent Review Draft" refers to a version of a W3C Specification defined as such by the W3C Process [PROCESS], that is published for patent review and exclusion.

## 3. Licensing Obligations of Working Group Participants

The following obligations shall apply to all participants in W3C Working Groups. These obligations will be referenced from each Working Group charter and Calls for Participation.

### 3.1. W3C RF Licensing Requirements for All Working Group Participants

As a condition of participating in a Working Group, each participant (W3C Members, W3C Team members, invited experts, and members of the public) shall agree to make available under W3C RF licensing requirements any Essential Claims. This requirement includes Essential Claims that the participant owns and any that the participant has the right to license without obligation of payment or other consideration to an unrelated third party. With the exception of the provisions of section 4 below, W3C RF licensing obligations made concerning the work of the particular Working Group and described in this policy are binding on participants for the life of the patents in question and encumber the patents containing Essential Claims, regardless of changes in participation status or W3C Membership.

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### 3.2. Limitation on Licensing Requirement for Non-Participating Members

Only the affirmative act of joining a Working Group, or otherwise agreeing to the licensing terms described here, will obligate a Member to the W3C RF licensing commitments. Mere Membership in W3C alone, without other factors, does not give rise to the RF licensing obligation under this policy.

### 3.3. Licensing Commitments in W3C Submissions

At the time a [W3C Member Submission](#) [*PROCESS*, section 10] is made, all Submitters and any others who provide patent licenses associated with the submitted document must indicate whether or not each entity (Submitters and other licensors) will offer a license according to the [W3C RF licensing requirements](#) for any portion of the Member Submission that is subsequently incorporated in a [Patent Review Draft or Recommendation](#). The W3C Team may acknowledge the Member Submission if the answer to the licensing commitment is either affirmative or negative, and shall not acknowledge the Member Submission if no response is provided.

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### 3.4. Note on Licensing Commitments for Invited Experts

Invited experts participate in Working Groups in their individual capacity. An invited expert is only obliged to license those claims over which s/he exercises control.

### 3.5. Specification Licensing Commitments

Working Group Participants who forego the right to exclude Essential Claims against a Specification when provided the opportunity to do so [see section 4], commit to license under the W3C RF Licensing Requirements any Essential Claims related to that Specification. This Specification Licensing Commitment is effective at the later of:

- The first publication of the Specification as either a Patent Review Draft or Recommendation in which the claim is essential;
- The end of the first Exclusion Opportunity pertaining to that claim.

### 3.6. Licensing Commitment Persistence

If a Working Group Participant makes Licensing Commitments on a Specification for an Essential Claim, the Licensing Commitment carries forward to a subsequent Patent Review Draft or Recommendation of the Specification if:

(i) the subsequent Patent Review Draft or Recommendation uses [implicates] the Essential Claim in a substantially similar manner and to a substantially similar extent with a substantially similar result as the Essential Claim was used in the Patent Review Draft; [and]

[(ii)the [portion of such] subsequent Patent Review Draft or Recommendation [[using][implicated by] the Essential Claim] is within the scope of the Working Group's charter as it existed at the time of the Member's Licensing Commitment to the Specification.]

## 4. Exclusion From W3C RF Licensing Requirements

Under the following conditions, Working Group participants may exclude specifically identified and disclosed Essential Claims from the overall W3C RF licensing requirements:

### 4.1. Exclusion With Continued Participation

Specific Essential Claims may be excluded from the [W3C RF licensing requirements](#) by a participant who seeks to remain in the Working Group, but only if that participant indicates refusal to license specific Essential Claims by specifically disclosing them as required in [4.5 Exclusion Mechanics] during an Exclusion Opportunity. The Exclusion Opportunity and its duration, as described herein, are announced with a Call for Exclusions.

A participant may exclude from the W3C RF licensing requirements any of their Essential Claims in a First Public Working Draft [PROCESS], or if there is any update to the Specification published within 90 days thereafter, in that latest Specification, within a 150-day Exclusion Opportunity that begins upon publication of the First Public Working Draft.

Additionally, if any claims are made essential by a Patent Review Draft as a result of subject matter not present or apparent at a previous Exclusion Opportunity, the participant may exclude these new Essential Claims, and only these claims, by excluding them within a 60-day Exclusion Opportunity that begins upon publication of the Patent Review Draft.

A participant that excludes Essential Claims may continue to participate in the Working Group.

### 4.2. Exclusion and Resignation From the Working Group

A participant may resign from the Working Group within 90 days after the publication of the First Public Working Draft of a Specification and be excused from all Specification Licensing Commitments arising out of Working Group participation with respect to that Specification.

If a participant leaves the Working Group later than 90 days after the Working Group's publication of a First Public Working Draft, that participant is bound to license Essential Claims pertaining to that Specification based on subject matter contained in the latest Working Draft or Patent Review Draft published before the participant resigned from the Working Group and all previous Patent Review Drafts to which the participant was committed, subject to any exclusions made by the participant pursuant to Section 4.1.

In addition, departing participants have a 60-day Exclusion Opportunity after their actual resignation to exclude Essential Claims made essential by documents not referenced in Calls for Exclusion (see section 4.5) if:

1. such claims are essential to subject matter that is contained in the latest Working Draft published before the participant resigns, and
2. such subject matter is not present or apparent in the latest Working Draft published within 90 days after the First Public Working Draft or in a Patent Review Draft.

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Deleted: , section 6.4, now replaced by "Candidate Recommendation". After that point, no claims may be excluded. (Note that if material new subject matter is added after Last Call, then a new Last Call draft will have to be produced, thereby allowing another exclusion period for 60 days after that most recent Last Call draft.)

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Deleted: . In addition, departing participants have 60 days after their actual resignation to exclude Essential Claims made essential by documents not referenced in the Call for Exclusion (see section 4.5) if:

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The participant follows the same procedures specified in this section 4 for excluding claims in issued patents, published applications, and unpublished applications. Participants resigning from a Working Group are still subject to all disclosure obligations described in section 6.

### 4.3. Joining an Already Established Working Group

Participants who join a Working Group more than 90 days after the publication of ~~a~~ First Public Working Draft must exclude Essential Claims covered in the latest Working Draft published within 90 days after the First Public Working Draft at the later of 150 days after the publication of the First Public Working Draft or upon joining the Working Group.

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Participants who join a Working Group after publication of a Patent Review Draft must exclude Essential Claims covered in the latest Patent Review Draft at the later of 60 days after the publication of the Patent Review Draft or upon joining the Working Group.

### 4.4. Exclusion Procedures for Pending, Unpublished Patent Applications

Exclusion of Essential Claims in pending, unpublished applications follows the procedures for exclusion of issued claims and claims in published applications in section 4.1 through 4.3, except that the final deadline for exclusion of unpublished claims is at ~~Patent Review Draft~~, plus 60 days for any material, regardless of whether or not it was contained in the documents referenced in the Call for Exclusion document. Nevertheless, 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.

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Any exclusion of an Essential Claim in an unpublished application must provide either:

1. the text of the filed application; ~~[and][or]~~,
2. identification of the ~~subsection(s)~~ of the ~~Specification~~, whose implementation makes the excluded claim essential.

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If option 2 is chosen, the effect of the exclusion will be limited to the identified part(s) of the specification.

### 4.5. Exclusion Mechanics

A Call for Exclusion will be issued by ~~W3C~~, indicating the relevant documents against which participants must make exclusion statements as well as precise dates and deadlines for making any exclusions. In case there is any dispute about the dates for exclusion, the dates indicated in the Call for Exclusion are controlling. The Call for Exclusion will be sent to the Working Group mailing list and the Advisory Committee Representatives of all organizations participating in the Working Group. In the event that a Working Group issues more than one ~~Specification~~, the exclusion procedure will be employed for each series of documents individually.

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Any exclusion of an Essential Claim must disclose:

1. the patent number or the publication number assigned to the patent application for a published application; and

2. identification of the subsection(s) of the Specification whose implementation makes the excluded claim essential.

## 5. W3C Royalty-Free (RF) Licensing Requirements

With respect to a Specification, developed under this policy, a W3C Royalty-Free license shall mean a non-assignable, non-sublicensable license to make, have made, use, sell, have sold, offer to sell, import, and distribute and dispose of implementations of the Patent Review Draft or Recommendation that:

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1. shall be available to all, worldwide, whether or not they are W3C Members;
2. shall extend to all Essential Claims owned or controlled by the licensor;
3. may be limited to implementations of the Patent Review Draft or Recommendation, and to what is required by the Patent Review Draft or Recommendation;
4. may be conditioned on a grant of a reciprocal RF license (as defined in this policy) to all Essential Claims owned or controlled by the licensee. A reciprocal license may be required to be available to all, and a reciprocal license may itself be conditioned on a further reciprocal license from all.
5. may not be conditioned on payment of royalties, fees or other consideration;
6. may be suspended with respect to any licensee when licensor is sued by licensee for infringement of claims essential to implement any W3C Patent Review Draft or Recommendation;
7. may not impose any further conditions or restrictions on the use of any technology, intellectual property rights, or other restrictions on behavior of the licensee, but may include reasonable, customary terms relating to operation or maintenance of the license relationship such as the following: choice of law and dispute resolution;
8. shall not be considered accepted by an implementer who manifests an intent **not** to accept the terms of the W3C Royalty-Free license as offered by the licensor.

License term:

9. The RF license conforming to the requirements in this policy shall be made available by the licensor as long as the Specification is in effect. The term of such license shall be for the life of the patents in question, subject to the limitations of 5(10).

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10. If the Patent Review Draft or Recommendation is rescinded [*PROCESS*, section 6.9] by W3C, then no new licenses need be granted but any licenses granted before the Patent Review Draft or Recommendation was rescinded shall remain in effect.

All Working Group participants are encouraged to provide a contact from which licensing information can be obtained and other relevant licensing information. Any such information will be made publicly available along with the patent disclosures for the Working Group in question.!

## 6. Disclosure

### 6.1. Disclosure Requirements

Disclosure is required when both of the following are true:

1. an individual in a Member organization receives a disclosure request as described in section 6.3; and
2. that individual has actual knowledge of a patent which the individual believes contains Essential Claim(s) with respect to the [Specification](#), for which disclosure is requested.

Anyone in a Member organization who receives a disclosure request and who has such knowledge must inform that AC Rep. Where disclosure is required, the AC Rep will do so.

### 6.2. Disclosure Exemption

The disclosure obligation as to a particular claim is satisfied if the holder of the claim has made a commitment to license that claim under [W3C RF licensing requirements](#) and the claim is no longer subject to exclusion under section 4. An Essential Claim is no longer subject to exclusion if a patent holder has affirmatively agreed to license the Essential Claim (effectively waiving its right to exclude such patent under section 4) or if the relevant exclusion period under section 4 has lapsed.

### 6.3. Disclosure Requests

Disclosure requests will be included in the "Status of This Document" section of each [Specification](#). Separate requests may be issued by the W3C to any party suspected of having knowledge of Essential Claims. Such disclosure requests will instruct the recipient to respond through their AC Rep (in the case of Members) or a W3C contact (in the case of non-Members). Disclosure requests other than those that appear in the [Specification](#), itself should be directed to the AC Rep.

Disclosure requests will provide administrative details for making disclosures.

### 6.4. Disclosure Contents

Disclosure statements must include:

1. the patent number, but need not mention specific claims
2. the Working Group and/or [Specification](#), to which it applies

### 6.5. Disclosure of Laid-Open or Published Applications

In the case of laid-open or published applications, the Member's good faith disclosure obligation extends to unpublished amended and/or added claims that have been allowed by relevant legal authorities and that the Member believes to be Essential Claims. To satisfy the disclosure obligation for such claims, the Member shall either:

1. disclose such claims, or
2. identify those portions of the [Specification](#), likely to be covered by such claims.

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## 6.6. Disclosure of Pending, Unpublished Applications

If a W3C Member includes claims in a patent application and such claims were developed based on information from a W3C Working Group or W3C document, the Member must disclose the existence of such pending unpublished applications.

## 6.7. Good Faith Disclosure Standards

Satisfaction of the disclosure requirement does not require that the discloser perform a patent search or any analysis of the relationship between the patents that the Member organization holds and the [Specification](#) in question.

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Disclosure of third party patents is only required where the Advisory Committee Representative or Working Group participant has been made aware that the third party patent holder or applicant has asserted that its patent contains [Essential Claims](#), unless such disclosure would breach a pre-existing non-disclosure obligation.

## 6.8. Timing of Disclosure Obligations

The disclosure obligation is an ongoing obligation that begins with the Call for Participation. Full satisfaction of the disclosure obligation may not be possible until later in the process when the design is more complete. In any case, disclosure as soon as practically possible is required.

## 6.9. Termination of Disclosure Obligations

The disclosure obligation terminates when the Recommendation is published or when the Working Group terminates.

## 6.10. Disclosure Obligations of Invited Experts

Invited experts or members of the public participating in a Working Group must comply with disclosure obligations to the extent of their own personal knowledge.

## 6.11. Disclosures to Be Publicly Available on Recommendation Track

Patent disclosure information for each [Specification](#) will be made public along with each public Working Draft issued by the Working Group.

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# 7. Exception Handling

## 7.1. PAG Formation

In the event a patent has been disclosed that may be essential, but is not available under [W3C RF licensing requirements](#), a Patent Advisory Group (PAG) will be launched to resolve the conflict. The PAG is an ad-hoc group constituted specifically in relation to the Working Group with the conflict. A PAG may also be formed without such a disclosure if a PAG could help avoid anticipated patent problems. During the time that the PAG is operating, the Working Group may continue its technical work within the bounds of its charter.



## 7.2. PAG Formation After a Recommendation Is Issued

A PAG may also be convened in the event Essential Claims are discovered after a Recommendation is issued. In this case the PAG will be open to any interested Member, though the PAG may choose to meet without the holder of the Essential Claims in question.

## 7.3. PAG Composition

The PAG is composed of:

- Advisory Committee Representatives of each W3C Member organization participating in the Working Group (or alternate designated by the AC Rep)
- Working Group Team Contact
- W3C counsel
- Working Group Chair, *ex officio*
- **W3C manager**, responsible for the Working Group
- Others suggested by the Working Group Chair and/or the Team with the approval of the Director

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W3C Member participants in the PAG should be authorized to represent their organization's views on patent licensing issues. Any participant in the PAG may also be represented by legal counsel, though this is not required. Invited experts are not entitled to participate in the PAG, though the PAG may chose to invite any qualified experts who would be able to assist the PAG in its determinations.

W3C expects to provide qualified legal staffing to all PAGs in the form of a Team member who develops experience with the PAG process and patent issues at W3C. Legal staff to the PAG will represent the interests of the Consortium as a whole.

## 7.4. PAG Procedures

### 7.4.1. PAG Formation Timing

The PAG will be convened by the Working Group Team Contact, based on a charter developed initially by the Team. The timing for convening the PAG is at the discretion of the Director, based on consultation with the Chair of the Working Group. In some cases, convening a PAG before a specific patent disclosure is made may be useful. In other cases, it may be that the PAG can better resolve the licensing problems when the **Specification** is at the Candidate Recommendation maturity level.

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### 7.4.2. PAG Charter Requirements

The charter should include:

- clear goals for the PAG, especially a statement of the question(s) the PAG is to answer.
- duration.
- confidentiality status, which must follow the underlying Working Group (Member only, public, etc.).

The PAG charter must specify deadlines for completion of individual work items it takes on. The PAG, once convened, may propose changes to its charter as appropriate, to be accepted based on consensus of the PAG participants. The Team will choose a member of the PAG to serve as Chair. A single PAG may exist for the duration of the Working Group with which it is associated if needed.

In order to obtain input from the interested public at large, as soon as the PAG is convened, the PAG charter will be made public, along with all of the patent disclosure and licensing statements applicable to the Working Group in question.

## 7.5. PAG Conclusion

### 7.5.1. Possible PAG Conclusions

After appropriate consultation, the PAG may conclude:

1. The initial concern has been resolved, enabling the Working Group to continue.
2. The Working Group should be instructed to consider designing around the identified claims.
3. The Team should seek further information and evaluation, including and not limited to evaluation of the patents in question or the terms under which W3C RF licensing requirements may be met.
4. The Working Group, or its work on the Specification(s) at issue, should be terminated.
5. The Specification, (if it has already been issued) should be rescinded.
6. Alternative licensing terms should be considered. The procedure in section 7.5.3 must be followed.

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### 7.5.2. PAG Outcome

Outcomes 4, 5 or 6 require an Advisory Committee review and Director's decision. In any case, the PAG must state its proposal and reasons in a public W3C document.

### 7.5.3. Procedure for Considering Alternate Licensing Terms

After having made every effort to resolve the conflict through options 1, 2, and 3 under 7.5.1, the PAG, by consensus [*PROCESS*, section 3.3], may propose that specifically identified patented technology be included in the Specification, even though such claims are not available according to the W3C RF licensing requirements of this policy ("PAG Proposal"). The PAG Proposal must explain:

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- why the chartered goals of the Working Group cannot be met without inclusion of the identified technology;
- how the proposed licensing terms will be consistent with widespread adoption.

The PAG Proposal must include:

- a complete list of claims and licensing terms of the proposed alternative arrangements; and,
- a proposed charter for the Working Group, unless the Recommendation has been issued and no new work is required.

If the Director determines that the PAG Proposal is the best alternative consistent with the W3C mission, the interests of the Web community, and is clearly justified despite the expressed preference of the W3C Membership for RF licensing, then the PAG Proposal shall be circulated for public comment and Advisory Committee review. The Director may also circulate the PAG Proposal for Advisory Committee review without such endorsement. Should the PAG Proposal be rejected, then either subparagraph 4 or 5 of section 7.5.3 will apply as appropriate, without further action of the Advisory Committee. Members of the Working Group who are bound to RF terms are not released from their obligations by virtue of the PAG Proposal alone. As with any newly chartered Working Group, new commitments must be made, along with possible exclusions. In order to expedite the process, the PAG Proposal should consider whether additional claims would be excluded under the new charter and include such information in the PAG Proposal.

## 8. Definition of Essential Claims

### 8.1. Essential Claims

"Essential Claims" shall mean all claims in any patent or patent application in any jurisdiction in the world that would necessarily be infringed by implementation of the ~~Specification~~. A claim is necessarily infringed hereunder only when it is not possible to avoid infringing it because there is no non-infringing alternative for implementing the normative portions of the ~~Specification~~. Existence of a non-infringing alternative shall be judged based on the state of the art at the time the ~~first Patent Review Draft containing the relevant normative text was published~~.

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### 8.2. Limitations on the Scope of Definition of Essential Claims

The following are expressly excluded from and shall not be deemed to constitute Essential Claims:

1. any claims other than as set forth above even if contained in the same patent as Essential Claims; and
2. claims which would be infringed only by:
  - portions of an implementation that are not specified in the normative portions of the ~~Specification~~, or
  - enabling technologies that may be necessary to make or use any product or portion thereof that complies with the ~~Specification~~, and are not themselves expressly set forth in the ~~Specification~~, (e.g., semiconductor manufacturing technology, compiler technology, object-oriented technology, basic operating system technology, and the like); or
  - the implementation of technology developed elsewhere and merely incorporated by reference in the body of the ~~Specification~~.
3. design patents and design registrations.

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### 8.3. Definition of Normative, Optional and Informative

For purposes of this definition, the normative portions of the ~~Specification~~, shall be deemed to include only architectural and interoperability requirements. Optional features in the RFC 2119 [~~KEYWORDS~~] sense are considered normative unless they are specifically identified as informative. Implementation

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examples or any other material that merely illustrate the requirements of the Specification, are informative, rather than normative.

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## References

### [KEYWORDS]

*Key words for use in RFCs to Indicate Requirement Levels*, S. Bradner. The Internet Society, March 1997. This is available at <https://www.rfc-editor.org/in-notes/rfc2119.txt>.

### [PROCESS]

*World Wide Web Consortium Process Document*, Charles McMathie Nevile, Editor. W3C, 1 March 2017. The [latest version](#) of the Process document may be found at <https://www.w3.org/Consortium/Process>

## Acknowledgments

### @@UPDATE@@

W3C's evolving patent policy has been informed by help, comments, criticism, and occasional rants by W3C Members, many voices from the independent developer and Open Source/Free Software communities, W3C Advisory Committee Representatives, the W3C Team, the W3C Advisory Board, and participants in the Patent Policy Working Group. Those who have participated in the beta testing of this policy, leading up to the [W3C Current Patent Practice](#) document, have also made an invaluable contributions to shaping this document in a manner that will help in achieving W3C's mission.

Every participant in the Patent Policy Working Group has made substantial contributions to this document. Since its inception, the following individuals have participated in the Working Group:

Jean-François Abramic (W3C), Chuck Adams (IBM), Angela Anderson (Nortel), Anders Arvidsson (Nokia), Martin Ashton (Reuters, Ltd.), Carl Cargill (Sun Microsystems), Wanda Cox (Apple Computer), W. Mike Deese (Microsoft), Mark DeLuca (Cozen O'Connor for Microsoft), Don Deutsch (Oracle), Tom Frost (AT&T), Michael Gelblum (Oracle), Mari Georges (ILOG S.A.), Lisa Goldman (Sun Microsystems), Eduardo Gutentag (Sun Microsystems), Toon Groenendaal (Philips Electronics), Michele Herman (Microsoft), Richard J. Holleman (IBM), Ian Jacobs (W3C), Glen Johnson (Nortel Networks), Jerry Kellenbenz (Apple Computer), George Kerscher (Daisy Consortium), Alan Kotok (W3C), Gerry Lane (IBM), Arnaud Le Hors (IBM), Susan Lesch (W3C, Team Contact), Roger Martin (AOL), Bede McCall (MITRE), Catherine McCarthy (Sun Microsystems), Lloyd McIntyre (Xerox), Earl Nied (Intel), Steve Nunn (The Open Group), Scott K. Peterson (Hewlett-Packard), Tony E. Piotrowski (Philips Electronics), Gene Potkay (Avaya), Chuck Powers (Motorola), Barry Rein (Pennie & Edmonds for W3C), Gib Ritenour (Nortel Networks), Michael Schallop (then Sun Microsystems), Kevin Smith (Nortel Networks), George Tacticos (IBM), David Turner (Microsoft), Daniel Weitzner (W3C, Working Group Chair), George Willingmyre (GTW Associates), Helene Plotka Workman (Apple Computer), Don Wright (Lexmark), Joe Young (Xerox), and Tom Zell (Xerox). Invited experts Eben Moglen (Free Software Foundation), Bruce Perens (Software in the Public Interest), and Larry Rosen (Rosenlaw.com for Open Source Initiative) participated and contributed fully.

Finally, Susan Lesch was an invaluable staff contact and has done a masterful job on several occasions to help this inherently complex document read more easily and clearly.

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