

ECLIPSE FOUNDATION, Inc.
INTELLECTUAL PROPERTY POLICY
Effective as of September 9, 2016 (the “Effective Date”)

0. DEFINITIONS

“Content” is copyrightable material, including without limitation software, documentation, articles, whitepapers, and presentation materials.

“Distributed Content” is Content (other than Hosted Content) which is distributed by the Eclipse Foundation via its Repository or other means in a manner consistent with this Intellectual Property Policy.

“Eclipse Content” is Distributed Content intended to be developed or modified by one or more Eclipse Projects (as that term is defined by the Eclipse Development Process), regardless of the license or licenses that govern the use of that Content.

“Hosted Content” is Content that is not subject to the full due diligence and record keeping requirements as set forth in this Intellectual Property Policy.

“Non-Eclipse Content” is Distributed Content which is not Eclipse Content.

“Code Content” is Content which is program code and documentation related to such code.

“Non-Code Content” is Content which is neither program code or documentation related to such code.

“Bylaws” are the Bylaws of the Eclipse Foundation, Inc. as amended from time to time.

“Submit” (and “Submitted” when used in the past tense) is:

- a) the act of uploading, submitting, or otherwise making available Content to the Eclipse Foundation through means including but not limited to blogs, wiki postings, mailing lists, news groups, and bugzilla and where such act is governed by the Eclipse.org Terms of Use, or
- b) in the case of Committers, the act of placing Content in the Repository or Hosted Repository where such act is governed by their Committer Agreement.

“Submission” is Content Submitted to the Eclipse Foundation.

“Submitter” is any party which makes a Submission, regardless of the copyright owner of the Submission, the license under which such Submission is made available, or where such Submission is maintained or developed.

“Committer” has the meaning as defined in the Eclipse Membership Agreement.

“Committer Agreement” is that agreement as defined in Section VIII of this Intellectual Property Policy.

“Contribution Agreement” is the then-current agreement made available by the EMO which defines the terms under which the Eclipse Foundation will accept Submissions.

“EMO” has the meaning as defined in the Bylaws.

“PMC” has the meaning as defined in the Bylaws.

“PMC Leader” has the meaning as referenced in Section 7.1 the Bylaws.

“Project Lead” has the meaning as defined in the Eclipse Development Process.

“Member” is any party which has executed an Eclipse Foundation Membership Agreement.

“Project License(s)” is the primary license(s) applicable to that project(s)’s Eclipse Content. The Project License will be the Eclipse Public License (“EPL”), except where approved by the Board of Directors pursuant to Section 3.9 of the Bylaws.

“Repository” is a repository provisioned by the Eclipse Foundation on Eclipse.org for the purpose of developing and modifying Distributed Content. Examples include, but are not limited to, git and Subversion. Only Committers may add, update or modify Content in a Repository.

“Hosted Repository” is a repository provisioned by the Eclipse Foundation on an Eclipse-maintained website for the purpose of making available Hosted Content. To the extent the Hosted Repository shall include Code Content, the availability of the Hosted Repository shall be approved by the Board of Directors.

I. OVERVIEW

The purpose of the Eclipse Foundation, Inc. (the “Eclipse Foundation”) Intellectual Property Policy (“IP Policy”) is to set forth the general principles under which the Eclipse Foundation shall:

- a) accept Content,
- b) redistribute Content,
- c) host Content, and
- d) manage other intellectual property matters.

This IP Policy is intended to address intellectual property issues associated with Content. Other intellectual property issues associated with Content, including patents, may be addressed in the Committer Agreements, Eclipse Foundation Terms of Use, www.eclipse.org, or in the Eclipse Public License.

This IP Policy applies only to Content Submitted to the Eclipse Foundation on or after the Effective Date, provided however, that to the extent Content is Submitted which includes elements which were Submitted before the Effective Date, this Policy only applies to the elements of that Content Submitted for the first time after the Effective Date.

This IP Policy should at all times be interpreted in a manner that is consistent with the Purposes of the Eclipse Foundation as set forth in the Bylaws.

By signing the Membership Agreement or Committer Agreement, as applicable, all Members and Committers agree to comply with this IP Policy, as may be amended from time to time. In addition, this IP Policy shall serve as the basis for how non-Members and non-Committers interact with the Eclipse Foundation through participation in a project, web-sites owned, controlled, published and/or managed under the auspices of the Eclipse Foundation, or otherwise.

The EMO shall be responsible for implementing this IP Policy with respect to all Content.

II. ACCEPTING CONTRIBUTIONS (IN-BOUND LICENSING)

The EPL shall serve as the primary license under which the Eclipse Foundation shall accept Content from contributors including, but not limited to, Members and Committers. The Eclipse Foundation will only redistribute Distributed Content under terms and conditions other than the EPL when:

- a) for proposed Eclipse Content, the copyright holder of such Content is unwilling to make it available under the EPL or the applicable Project License is not the EPL;
- b) the EMO, the PMC Leader and the Committer have determined that the proposed Content is important to achieving the Project Plan (as that term is defined in the Development Process) and the Purposes (as that term is defined in the Bylaws) of the Eclipse Foundation; and
- c) both the Eclipse Foundation Board (or the Board's designee specifically authorized for this responsibility) and the applicable PMC (as that term is defined in the Development Process) have reviewed and approved the use of the proposed alternative terms and conditions.

The mechanisms by which the Eclipse Foundation obtains rights to Submissions sufficient to distribute them as Distributed Content are:

- a) a Committer Agreement;
- b) a Contribution Agreement;
- c) explicit license grants as stipulated by Submitters with respect to each Submission;
- d) the version of the Eclipse.org Terms of Use in effect at the time of the Submission; or
- e) as otherwise mutually agreed upon by the Submitter and the EMO.

It is the responsibility of the EMO to ensure that for each Submission which is accepted for redistribution as Distributed Content that:

- a) sufficient controls are in place to ensure that for each such Submission the Content is placed in the Repository by a Committer;
- b) sufficient license grants are obtained as to allow the redistribution of such Content as described below in Section III; and
- c) the due diligence and record keeping described in Section IV be performed.

It is the responsibility of the EMO to ensure that for each Submission which is to be made available as Hosted Content that:

- a) sufficient controls are in place to ensure that for each such Submission which is Code Content that such Code Content is placed in the Hosted Repository by a Committer;
- b) sufficient license grants are obtained as to allow the hosting of such Content as described below in Section III;
- c) the limited due diligence and record keeping described in Section IV (D) for Hosted Content be performed; and
- d) such Hosted Content will only be made available through a Hosted Repository.

III. LICENSING CONTRIBUTIONS (OUT-BOUND LICENSING)

Unless otherwise approved by the Board of Directors under Section 3.9 of the Bylaws:

- a) the Project License shall be the EPL; and
- b) the license terms for copyrightable materials other than software and documentation shall be the EPL.

In limited circumstances, there may be instances where Eclipse Content based on Non-Eclipse Content may be approved for distribution by the EMO under terms and conditions other than the Project License(s). In these instances the EMO may decide that the terms and conditions of the license governing the original Non-Eclipse Content will apply to such Eclipse Content. Examples include but are not limited to:

- bug fixes of Non-Eclipse Content to be maintained as Eclipse Content where the developer(s) of the Non-Eclipse Content is unable or unwilling to provide such bug fix;
- derivative works of Non-Eclipse Content to be maintained as Eclipse Content where the developer(s) of the Non-Eclipse Content is unable or unwilling to maintain the derivative work.

Non-Eclipse Content shall only be distributed when it has been approved by the EMO after its completion of the due diligence and record keeping requirements set forth in Section IV and the Board has approved the terms and conditions of the license for such Non-Eclipse Content. Non-Eclipse Content shall be distributed under the terms and conditions under which it was obtained. As an exception to the foregoing sentence, if requested by the PMC and agreed to by the EMO, Non-Eclipse Content may instead be distributed under the terms and conditions of the Project License.

Before any Content is placed in the Repository or made available for download or other method of distribution, the applicable Committer(s) must ensure that the terms and conditions governing the subsequent use of the Content are clearly communicated to potential recipients of the Content.

IV. DUE DILIGENCE AND RECORD KEEPING

Except as otherwise described below, the EMO, working with the applicable PMC(s) and Committer(s), shall ensure compliance with this IP Policy by conducting the following activities prior to placing any Submissions into the Repository and/or otherwise making such Content available as Distributed Content.

If there are any doubts about the ability to distribute the Content as described in Section III of this IP Policy, the Committer may not place the Content in the Repository or otherwise distribute the Content and should contact the PMC and the EMO for assistance.

In the event of a dispute between the PMC and the EMO, the PMC shall have the right to appeal to the Eclipse Foundation Board for resolution of such dispute. The PMC or EMO shall be responsible for filing/maintaining the information collected by the Committer(s) for future reference as needed.

The due diligence and record keeping requirements below (“Required Due Diligence”) shall not apply to:

- Content which is not Distributed Content, except as specified below in Section D for Hosted Content; and
- minor (as determined by the EMO) modifications to Distributed Content.

While the record keeping requirements do not apply to those items listed above, Committers, must conduct reasonable due diligence to satisfy themselves that proposed Submissions can be distributed as described above in Section III.

A. In the case of Content that is requested by one or more projects to be made available as Eclipse Content:

For Submissions of Content which are the original work of a Committer or Committer’s employer Submitted under the terms of their Committer Agreement, it will be the responsibility of the EMO to ensure that automated systems are in place which can track and report on those Submissions made by each individual Committer.

For any other Submissions of Content by a Committer, the EMO, working with the applicable PMC(s) and Committer(s), shall approve the use of such Content as Eclipse Content by ensuring that:

- (1) (1) the Submitter has a valid and current Contribution Agreement. For significant Submissions, run and analyze the results of a scan tool provided by the EMO, using parameters provided by the EMO, to help confirm the provenance of the Content.
- (2) Reasonable judgment shall be used to determine if the Content can be distributed as described in Section III of this IP Policy.

B. In the Case of Content that is requested by one or more projects to be made available as Non-Eclipse Content:

The Project Lead(s) for each Eclipse Project shall document the level of review required for its Non-Eclipse Content as “Type A” or “Type B” as defined below. The EMO, working with the applicable PMC(s), Project Lead(s) and Committer(s), shall document, and where required approve the use of Content as Non-Eclipse Content by contacting the Committer(s) seeking to Submit such Content, and collect, confirm, and maintain a record of the following: ..

For “Type A” Projects:

- (1) It will be the responsibility of the Eclipse Project to run and analyze the results of a scan tool provided by the EMO, using parameters provided by the EMO, to obtain the terms and conditions under which such Content would be distributed by the Eclipse Foundation, and ensure that such terms are consistent with the Project

Licenses. The Eclipse Project will certify that the terms and conditions of its Non-Eclipse Content conform to the then-current licensing guidelines as provided by the EMO. No further approvals will be required from the EMO prior to the Eclipse Project placing the Non-Eclipse Content into the Repository.

For “Type B” Projects:

In addition to the steps described above for Type A Projects, the EMO will:

- (2) Run and analyze the results of a scan tool provided by the EMO, using parameters provided by the EMO, to help confirm the provenance of the Content.
- (3) Confirm the provenance of the Content by asking the redistributors(s), maintainers(s), and/or the original author(s) of the Content questions such as:
 - i. What is your process to obtain the necessary rights to enable you to redistribute the author(s)’ work?
 - ii. Did you agree to your code being distributed, under the applicable license agreement(s)?
 - iii. Did you write the code in question?
 - iv. Does anyone else have rights to the code in question?

The above are examples to illustrate the types of questions asked to gain comfort that the Eclipse Foundation can distribute such Content. Committers on Type B Projects may not place Non-Eclipse Content into the Repository without the approval of the EMO.

Reasonable judgment shall be used to determine if the Content can be distributed as Non-Eclipse Content as described in Section III of this IP Policy.

C. Enabling Parallel IP Due Diligence for Projects

Content for which Required Due Diligence has not been completed must never be made available as Distributed Content in any software distribution by any project denoted as a release candidate (e.g. “RC1”) or final release (e.g. “1.0”). In addition, reasonable steps should be taken to ensure that any Content which fails the Required Due Diligence is no longer made available as Distributed Content.

All necessary license obligations must be fulfilled for any Content to be made available as Distributed Content for which Required Due Diligence has not been completed. Such license obligations may include, but are not limited, to terms and conditions that must appear in notices and agreements governing the use of such Content when it is made available as Distributed Content.

Content may be redistributed as Distributed Content by a project in the Incubation Phase (as that term is defined in the Development Process) without completing Required Due Diligence, if all of the following conditions are met:

- (1) Required Due Diligence will be completed before the project is permitted to pass its Graduation Review and enter the Mature Phase (as that term is defined in the Development Process).

Content may be redistributed as Distributed Content by a project in the Mature Phase (as that term is defined in the Development Process) without completing Required Due Diligence, if the following conditions are met:

- (1) Required Due Diligence has been completed for an earlier version of the Content thus allowing that earlier version of the Content to be approved for redistribution (in any Eclipse project) as Distributed Content; and
- (2) the differences between the Content and the earlier version of the Content described in 1) above, are not in the opinion of the EMO, significant enough to warrant “full approval” by completing Required Due Diligence;
- (3) the Board has approved the license for the Content if it is not the same as the license for the earlier version of the Content;

D. In the Case of Content Submitted as Hosted Content:

For each Submission of Hosted Content by a Committer it will be the responsibility of the EMO to ensure that automated systems are in place to ensure that the following information is recorded:

- (1) The name (including, as applicable, the namespace) of the Code Content.
- (2) The name and website URL of the organization from which the Code Content originates.
- (3) The version number (as applicable) of the Code Content
- (4) The license(s) and version (as applicable) under which the Code Content is made available, including a complete copy of the same.

It will be the responsibility of the EMO to ensure that the license(s) under which Submissions of Code Content are made available as Hosted Content is one of the following:

- (1) the Eclipse Public License,
- (2) alternative terms and conditions previously approved by the Eclipse Foundation Board for Content included in the Repository, or
- (3) a license expressly approved by the Eclipse Foundation Board for use by a Hosted Repository.

For Submissions of Non-Code Content as Hosted Content, there shall be no data collection or due diligence requirements, except that it will be the responsibility of the EMO to ensure that the terms and conditions which govern the use of Non-Code Content made available in a Hosted Repository are one of the following:

- (1) the Eclipse Public License, or
- (2) a license approved by the Board of the Eclipse Foundation for Non-Code Content.

V. TECHNOLOGY REVIEWS

The Eclipse Development Process identifies three important milestones in a Project's lifecycle: (i) Creation Review; (ii) Graduation Review; and (iii) Release Review [collectively, the "Check Point Review"]. One of the tasks associated with Creation Review is an initial determination, by the Project Team of new Content that may be added to the Eclipse Platform. The Graduation Review is used, among other things, to determine whether the Project Team has acquired the necessary rights to all such additional Content to permit the distribution of such Content. The Release Review is used as a final review to ensure that all necessary rights to the new Content have, in fact, been acquired. If such rights have not been acquired, the applicable Content will not be externally distributed. The Check Point Review will also be used to provide each Member with an opportunity, but NOT an obligation, to review the technical plans and related Submissions, if any, for the Project and identify any intellectual property rights including, but not limited to, patent rights, the Member may have that they reasonably believe may be infringed/misappropriated by a Submission if a user of such Submission does not receive a license from that Member to that intellectual property.

In the event that a Member elects to notify the Eclipse Foundation of any such intellectual property rights, the Member shall notify the EMO in writing. Upon receipt of such notice, the EMO shall review the identification of the potential infringement/misappropriation, and determine an appropriate course of action consistent with this IP Policy. The same process shall apply if the Member identifies the potential infringement/misappropriation after the Check Point Review. Nothing in this IP Policy shall in any way be interpreted to modify or supersede the terms of the EPL in any manner. This policy shall in no way be interpreted: (1) to require the Eclipse Foundation to agree with a Member that the Submission that has been identified may infringe or misappropriate that Member's intellectual property; (2) to require any Member to license its intellectual property to the Eclipse Foundation, any Member or any other party; or (3) to prevent a Member from enforcing its intellectual property rights against the Eclipse Foundation, a Member(s), or any other party as a result of the Member not identifying any such potential infringement/misappropriation during these review cycles or at any other time.

VI. CONFIDENTIALITY

The Eclipse Foundation, Member(s), Committer(s) and other parties may exchange information as a result of their participation in Eclipse Projects and/or generally in the furtherance of the Purposes of the Eclipse Foundation. All such information shall be

considered non-confidential and provided under terms consistent with this IP Policy. In the event confidential information needs to be shared, such confidential information shall be disclosed pursuant to a confidentiality agreement entered into by the participants in such disclosure.

VII. TRADEMARKS AND LOGOS

The use of trademarks and logos associated with the Eclipse Foundation shall be used in accordance with the then current Eclipse Foundation Trademark Usage Guidelines.

VIII. COMMITTEE AGREEMENT

Each Committer must execute a Committer Agreement, or have its employer execute a Committer Agreement on the Committer's behalf. Such Committer Agreement shall:

- a) provide sufficient license grants to allow the Eclipse Foundation to distribute Content Submitted by the Committer as Distributed Content; and
- b) obligate the Committer to comply with this IP Policy and other policies of Eclipse Foundation in effect from time to time.

IX. DISCLAIMERS AND NOTICES

When a provision in this IP Policy refers to actions to be taken by the EMO, a Committer, PMC, and/or the Board, such provisions should read to mean the EMO, a Committer, PMC and/or the Board acting on behalf of the Eclipse Foundation.

UNDER NO CIRCUMSTANCES SHOULD THIS IP POLICY BE INTERPRETED TO BE A REPRESENTATION, WARRANTY, CONDITION, OR OTHER FORM OF GUARANTEE THAT THE INTELLECTUAL PROPERTY RIGHTS OF A MEMBER, COMMITTEE, SUBMITTER OR ANY OTHER PARTY, WILL NOT BE INFRINGED IF THIS IP POLICY IS COMPLIED WITH. IN ADDITION, THE ECLIPSE FOUNDATION, ITS MEMBERS, COMMITTEES, AND THEIR RESPECTIVE EMPLOYEES AND AGENTS SHALL HAVE NO LIABILITY OF ANY KIND TO EACH OTHER OR TO ANY OTHER PARTY FOR FAILURE TO COMPLY WITH THIS IP POLICY.

THE ECLIPSE FOUNDATION, ITS MEMBERS, COMMITTEES AND THEIR RESPECTIVE EMPLOYEES AND AGENTS HEREBY DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED AND STATUTORY INCLUDING, BUT NOT LIMITED TO, ANY REPRESENTATION OR WARRANTY OF NON-INFRINGEMENT RELATING TO ANY SOFTWARE OR PRODUCT MADE AVAILABLE THROUGH THE ECLIPSE FOUNDATION.

THE ECLIPSE FOUNDATION, ITS MEMBERS, COMMITTEES AND THEIR RESPECTIVE EMPLOYEES AND AGENTS SHALL NOT HAVE ANY LIABILITY INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL AND CONSEQUENTIAL DAMAGES WITH RESPECT TO THIS IP POLICY INCLUDING, BUT NOT LIMITED TO, FAILURE TO COMPLY WITH THIS IP POLICY.