

## **Implementing the IP Policy**

**September 21, 2011**

### **Purpose:**

The purpose of this Policy is twofold:

[1] Subject to the EMO following the process specified herein, the Eclipse Foundation Board delegates the responsibility for approving the use of alternative terms and conditions at Eclipse under Section II, first subparagraph (c) of the Eclipse IP Policy to the Executive Director. For clarity, EMO compliance with the following process will satisfy such condition c) under Section II of the Eclipse IP Policy. For clarity purposes, this document is not intended to address the PMC approval required under Section II, first subparagraph (c).

[2] Subject to the EMO following the process specified herein, and subject to the satisfaction of any issues associated with the use of alternative terms and conditions related to paragraph [1] above, if any, the Eclipse Foundation Board will consider for approval the use of Non-Eclipse Content that would not otherwise be approved for redistribution at Eclipse pursuant to Section IV B of the Eclipse IP Policy due to an inability to confirm the provenance of the Non-Eclipse Content.

### **Policy:**

The EMO will maintain the following non-public email list which contains all Board members and/or their delegates: [eclipse.org-contribution-review@eclipse.org](mailto:eclipse.org-contribution-review@eclipse.org). When a project proposes the inclusion of Non-Eclipse Content (as that term is defined in the Eclipse IP Policy) that is governed by a license other than the Project License, as that term is defined by the Eclipse IP Policy the EMO will:

- review the associated license(s) for compatibility with the Project License(s);
- determine whether the license(s) associated with the Non-Eclipse Content has been used before to redistribute Content at Eclipse (“Previously Used License”).

Note: To the extent that a license associated with Non-Eclipse Content has not been previously approved, pursuant to Section 3.9(b)(ii) of the Eclipse Bylaws, and has been determined by the EMO to not be generally consistent with those previously approved for distribution within Eclipse, the EMO shall follow the procedures set forth in Section C below.

#### A) Not Previously Used Licenses

In the event that the EMO determines that the license(s) is/are compatible with the Project License(s) and the license has not previously been approved for distribution within Eclipse, the EMO will send an email to [eclipse.org-contribution-review@eclipse.org](mailto:eclipse.org-contribution-review@eclipse.org) providing the following information:

- the name of the license, if any
- a copy of the license or a link to it

If after fifteen (15) calendar days have passed with no objections raised by any board members, the license may be approved by the EMO for use by Eclipse projects. Future uses of the license will consider such license a Previously Used License under this procedure. The email to the Board will clearly state that if no objections are raised, the license may be approved. All Board members are strongly encouraged to provide any objections in a timely fashion in order to avoid any unnecessary delays to project schedules.

Concurrent with the above board review, the EMO will conduct its due diligence in accordance with the Eclipse IP Policy, and any then current Eclipse Foundation policies. Once a contribution has passed EMO review, provided the EMO in its discretion recommends the contribution for approval and provided that no comments which the EMO reasonably interprets as objections by any Board member under the previous paragraph were raised, the contribution will be approved by the EMO.

#### B) Seeking Board Guidance

In the event that the EMO identifies concerns during the due diligence review that the EMO believes should be brought to the attention of the Board, an email will be sent to the [eclipse.org-contribution-review@eclipse.org](mailto:eclipse.org-contribution-review@eclipse.org) with at least the following information:

- name and version of the contribution
- the project requesting the contribution
- a copy of the related license(s) or a link to it
- an outline of the issues that the EMO is bringing to the attention of the Board.

#### C) Seeking Board Approval for Redistribution of Certain Non-Eclipse Content

In the event that the EMO finds that:

- i) the Non-Eclipse Content would not, after review pursuant to Section IV B of the Eclipse IP Policy, be otherwise approved for redistribution at Eclipse due to an inability to confirm the provenance of the Non-Eclipse Content; or
- ii) the terms and conditions under which the Non-Eclipse Content would be redistributed by Eclipse have been determined by the EMO or the Board to not be generally consistent with those previously approved for distribution within Eclipse. For example, a license which is not generally considered as commercially-friendly for use by software vendors;

and the EMO determines that the functionality, usability or consumability of Eclipse Project(s) would be significantly restricted or reduced absent the use of such Non-

Eclipse Content, and there is no reasonable alternative available, the EMO shall seek Board approval to redistribute such Non-Eclipse Content by those Eclipse Project(s) stipulated in the information provided by the EMO to the Board. An email will be sent to the [eclipse.org-contribution-review@eclipse.org](mailto:eclipse.org-contribution-review@eclipse.org) with at least the following information, for inclusion as an agenda item in a subsequent meeting of the Eclipse Board of Directors:

- name and version of the contribution
- the Eclipse Project(s) requesting the authority to distribute the Non-Eclipse Content
- the EMO's rationale as to why the functionality, usability or consumability of an Eclipse project would be significantly restricted or reduced absent the use of such Non-Eclipse Content, and there is no reasonable alternative available;
- the terms and conditions under which such Non-Eclipse Content would be distributed by Eclipse; and
- a summary of the provenance related concerns.

The Eclipse Board of Directors shall, as a factor in its consideration of the proposed redistribution, consider the EMO's determination that the functionality, usability or consumability of an Eclipse project would be significantly restricted or reduced absent the use of such Non-Eclipse Content, and that there is no reasonable alternative available.

The level of approval required for any redistribution of such Non-Eclipse Content for which the provenance could not be fully confirmed shall be a two thirds majority of the Board of Directors. The level of approval required for any redistribution of Non-Eclipse Content where the terms and conditions under which such Non-Eclipse Content would be distributed has been determined by the EMO to not be generally consistent with those previously approved for distribution within Eclipse, shall be a unanimous vote by the Board of Directors pursuant to Section 3.9(b)(ii) of the Eclipse Bylaws.

#### D) Handling Objections Raised

The rationale for any objection under either (A) or (B) above does not need to be provided on the mailing list. However, any objections must be raised on the [eclipse.org-contribution-review@eclipse.org](mailto:eclipse.org-contribution-review@eclipse.org) mailing list. They cannot be raised in private emails to the EMO. Any private emails received by the EMO, the Executive Director or other Eclipse Foundation staff will be responded to with a statement that if the objection is to be considered in this process it must be raised on the [eclipse.org-contribution-review@eclipse.org](mailto:eclipse.org-contribution-review@eclipse.org) mailing list.

If an objection is raised, the EMO will broker a conversation between the interested parties in attempt to resolve all concerns. It is important to recognize that these conversations will have business as well as legal parameters. For example, rejecting a contribution may require a project (and its corporate sponsors) significantly more

development investment in order to accomplish its goals. In all of these discussions the intent is to balance risk with value to the Eclipse community.

- The results of any such meetings will be documented on [eclipse.org-contribution-review@eclipse.org](mailto:eclipse.org-contribution-review@eclipse.org)

In the event that a satisfactory resolution of any issues cannot be arrived at, the decision as to whether to include a contribution will be made by the entire Board of Directors using the process as described in Section C herein.<sup>1</sup>

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<sup>1</sup> Note that this will take a minimum of thirty (30) days to organize.