

THE OSCRE IPR POLICY

FREQUENTLY ASKED QUESTIONS



General Questions

Q: Why has OSCRE adopted an IPR policy?

A: OSCRE is a standards development organization, which means that it creates technical specifications that it hopes will be broadly implemented across the industry. By definition, this means that OSCRE needs to have the right to distribute its specifications, and also to do what it can to ensure that when someone implements an OSCRE specification, it does not knowingly infringe upon patent rights of any member or non-member. All formal specifications organizations have IPR policies for these reasons, although the exact terms of a given organization's IPR policy will vary somewhat depending upon the conventions of the industry it serves, the composition of its membership, the technologies involved, and other factors.

Q: Are OSCRE's concerns different from other standards organizations?

A: No. If you are a member of other specifications organizations, you'll find that their IPR policies address the same concerns as does the OSCRE IPR Policy.

Q: Who does the OSCRE IPR Policy apply to?

A: It applies to every member, every individual that represents a member in connection with the OSCRE technical process when they are serving in that role, and, with respect to patent claims, also to the direct and indirect subsidiaries of the member. When we use the word "you" below, we are referring to all of the above.

Q: Why does the IPR Policy apply to a member's direct and indirect subsidiaries?

A: Let's say a company owns a patent that might be infringed by a specification described in a working group charter, depending on how that specification turns out. It doesn't want to make that patent available for free, but it would love to have implementers owe royalties to it once the specification gets adopted. So it asks its parent company, or a sister company, to join instead, and asks it to steer the development of the specification in the direction of infringement – thus succeeding in launching a "submarine patent" that it can assert against implementers after the specification becomes widely adopted and the marketplace has become "locked in." Making the IPR Policy applicable to the direct and indirect subsidiaries of a member makes it harder to play this type of game.

Member Obligations

Q: What are my obligations under the policy if I offer something for inclusion in a specification?

A: If you submit material, OSCRE of course needs to know that anyone, anywhere in the world, can implement the resulting specification if it decides to take you up on your offer. As a result, the policy requires you to commit to make any of your "Necessary Claims" under patents available to implementers, either for free, or for a reasonable royalty or other fee, and on terms that are otherwise "reasonable and non-discriminatory" (a/k/a "RAND"). RAND means that you won't, for example, charge

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two different implementers two different prices in an identical situation, and that you won't ask for anything unreasonable in return. This is essential so that OSCRE specifications can be widely implemented.

Q: What's a "Necessary Claim?"

A: A patent claim that you "Own" that an implementer couldn't help infringing if they implemented the specification in question. "Owned" means either outright ownership, or the right to sublicense the patent claim to others without having to pay anything to the actual owner.

Q: What if I'm just part of the working group that is developing a specification?

A: Unlike a submitter, someone who is just part of the working group has a third choice – to announce that it will refuse to make a Necessary Claim available on RAND terms, provided that it discloses its intention no later than the time that the specification in question is posted for final comments, as well as the part of the specification that would be infringed by that claim. This would permit the working group to try and "design around" the Necessary Claim and still approve a specification that meets the original goals of the working group.

Q: What if OSCRE starts a working group that I'm not interested in? Do I still have to provide free rights under any Necessary Claims I may own under a specification they develop?

A: No. Only those that make a submission to, or participate in, the development of a specification acquire Necessary Claims obligations with respect to that specification.

Q: How will I know in advance whether I'll have to worry about my patents if I join a working group?

A: Each working group will adopt a written charter that will bound its area of work.

Q: What if someone doesn't disclose a Necessary Claim when they're supposed to?

A: The IPR Policy requires them to license it on RAND terms (either with or without a royalty or other fee) to those that wish to implement the specification in question.

Process and Administration

Q: What if we have a patent with Necessary Claims, but don't want to bother with licenses because we don't plan on charging royalties anyway?

A: It's fine to simply commit not to sue an implementer.

Q: What if an implementer sues me, though?

A: RAND terms permit you to revoke any license that you previously granted to that implementer, thus leveling the playing field.

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Q: I know that most standards organizations require members to disclose patents in writing at some point during the process. Does OSCRE require that as well?

A: Yes. OSCRE uses standard forms where all you need to do is check the box of the option that you choose (and provide the other information referred to above if you are a Participant that elects to withhold any of its Necessary Claims).

Copyright and Trademark

Q: What does the IPR Policy provide regarding other types of intellectual property?

A: Like the IPR policies of other organizations, the OSCRE IPR Policy says that members continue to own the copyright in any contributions they make, while requiring members to acknowledge that OSCRE will own the copyright in the final specification, and in any other types of OSCRE work product (e.g., guidelines, whitepapers, etc.). Similarly, OSCRE can't use the trademark of a member (other than to indicate that it is a member) without its permission, and a member can't use a trademark owned by OSCRE (except to indicate its membership in OSCRE) except with the permission of OSCRE.