



# **INTELLECTUAL PROPERTY RIGHTS POLICY OF OPEN GIS CONSORTIUM, INC.**

## **OVERVIEW**

Revised 17 April 2003

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## Revision History

Version	Date	Author/Editor	Comments
1.0	9 May 2002	Jeff Burnett et al	Adopted by OGC Board of Directors on 9 May 2002
1.1	17 April 2003	Jeff Burnett et al	Accepted by OGC Board of Directors on 17 April 2003
1.1.1	19 May 2003	Jeff Burnett	Definitions & Acronyms added.

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## Future Work

The document is periodically reviewed by and changes are made only with the approval of the OGC Board of Directors.

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## Overview of Intellectual Property Policy – Process and Implementation

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### **I. Introduction**

Intellectual property rights (“IPR”) policies are a topic of close scrutiny on the part of not only companies engaged in standard setting, but also government regulators. In recognition of the increasing importance of IPR policies, the Board of Directors of Open GIS Consortium (“OGC”) revamped its IPR policies and procedures on 9 May 2002 to:

1. Anchor OGC<sup>SM</sup> IPR procedures firmly in the mainstream of current standard setting “best practices;”
2. Make information about the OGC IPR policy easier to understand and available in greater detail to both Members and potential Members alike; and
3. Streamline OGC’s adoption of technology process.

We are aware of Members’ diverse opinions on several terms essential to an IPR program. In settling on the process described in this policy, we have tried to address this reality by choosing terms which have been most widely adopted by leading standard setting bodies, and which represent a “middle” ground rather than an extreme position in any direction.

As a result, no term incorporated in the policy should be so far from the desired position of any Member that the Member cannot live with it. Further, all Members can be secure in the knowledge that the policy adopted will facilitate the achievement of OGC goals. Our counsel and we agree that the procedures described below represent the best model for serving our Members and achieving the Members’ goals for OGC.

This Overview Document describes the elements of the submission and adoption process that relate to IPR chronologically within the “Specification Process,” as well as a description of the actions to be taken while conducting “Other Consortium Business.” This document also identifies the legal documents that are employed by OGC, current copies of which appear as exhibits to this Overview.

### **II. Definitions & Acronyms**

Below are terms that may be useful to readers not familiar with the *OGC Technical Committee Policies & Procedures* document. For a comprehensive list of Definitions and Acronyms, please refer to the Section 3 of the current document, which may be downloaded from <http://www.opengis.org/ogcSpecsPrg.htm>.

**Member** – Any Member as defined in Article II *Members* of the Bylaws of Open GIS Consortium, Inc.

**OGC Interoperability Program** – A global, collaborative, hands-on engineering and testing program designed to deliver proven candidate specifications into the OGC Specification Program and to exercise and test existing OGC Implementation Specifications in domain specific situations. Any Interoperability Program activity has two primary constituents:

**Sponsors** – organizations that contribute significant resources (financial, personnel, facilities, etc.) to define and operate an initiative. Sponsors drive requirements, technical scope and agenda, and demonstration form and content.

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**Participants** – organizations that define new interfaces, develop prototypical implementations, and provide other engineering support. Sponsors of an initiative determine who participates in an initiative by evaluation of proposals submitted in response to a Request for Quotation / Call for Participation document or Sponsor selection efforts.

**OGC Specification Program** – Provides an industry consensus process to plan, review and officially adopt OpenGIS® Specifications for interfaces and protocols that enable interoperable geoprocessing services, data, and applications. The OGC bodies involved in the Specification Program are the Technical Committee, Planning Committee, and Strategic Advisory Committee.

**OGC Technical Committee Policies & Procedures** – The document that outlines the policies and procedures used by the Technical Committee of the Open GIS Consortium, Inc. These policies and procedures may change by vote of the Technical Committee or by action of the OGC Planning Committee as the needs and purpose of the Technical Committee change.

**OpenGIS® Abstract Specification** – A document (or set of documents) containing an OGC consensus computing technology independent specification for application programming interfaces and related specifications based on object-oriented or other IT accepted concepts that describes and/or models an application environment for interoperable geoprocessing and geospatial data and services products.

**OpenGIS® Implementation Specification** – A document containing an OGC consensus computing technology dependent specification for application programming interfaces and related specifications based on the Abstract Specification or domain-specific extensions to the Abstract Specification provided by domain experts (usually as a result of activity in the SIGs and WGs).

**OpenGIS® Specification** – A term used to refer to an OpenGIS® Implementation Specification or a Sponsored (or Adopted) Specification as defined herein.

**Planning Committee or PC** – The OGC Planning Committee is granted authority to operate by the Bylaws of Open GIS Consortium, Inc. The PC is composed of individuals representing organizations that are Principal Members of the OGC in good standing.

**Proposed Specification** – A Specification in the form of an existing, operational specification that an OGC Voting TC Member wishes to sponsor under the Bylaws of the OGC in response to an RFP or as an RFC proposal. The TC evaluates a *Proposed Specification* for potential recommendation as a *Sponsored Specification*.

**Request for Comment, or RFC** – An explicit request to the industry for comments concerning a particular proposed specification that a Working Group is considering for adoption as a Sponsored Specification satisfying a portion of the Abstract Specification. An RFC begins as an unsolicited proposal from a Voting TC Member or Members and results, if successful, in an OGC Implementation Specification. The RFC process will typically be how engineering and interface specifications developed in the OGC Interoperability Program move into the formal TC specification approval process.

**Request for Information, or RFI** – A general request to the industry to submit information to one of the Working Groups in anticipation of an RFP or to fill a gap in the Abstract Specification.

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**Request for Proposals, or RFP** – An explicit request to the industry to submit proposals to one of the Working Groups for Implementation Specifications satisfying a portion of the Abstract Specification.

**Specification** – A Proposed Specification, a Sponsored (or Adopted) Specification, or an OpenGIS Implementation Specification as defined herein.

**Specification Development Process** – The operational details of the RFI, RFP, and RFC processes to solicit, propose, review, recommend modifications to, and recommend adoption of specifications.

**Sponsored (or Adopted) Specification** – A Specification that has been sponsored by an OGC Voting TC Member, and proposed and accepted as Sponsored Specification under the OGC Bylaws, e.g., by the PC.

**Strategic Advisory Committee or SAC**– The SAC is granted authority to operate by the Bylaws of Open GIS Consortium, Inc. The SAC is composed of individuals representing organizations that are duly recognized Strategic Members in good standing of the OGC. The SAC has as a primary responsibility to recommend areas of strategic opportunity for Consortium operations and to recommend resource strategies in support of Consortium programs to the Board of Directors, Consortium staff and the Membership.

**Technical Committee or TC** – The OGC Technical Committee is granted authority to operate by the Bylaws of Open GIS Consortium, Inc. The TC is composed of individuals representing organizations that are Members of the OGC in good standing.

**TC Member** – Any Member of the TC in good standing.

**Voting TC Member** – Any Member of the TC who may vote on TC Items and Issues. Voting TC Members are the Technical Representatives of OGC Technical Committee Members, Principal Members, and Strategic Members.

**Working Group, or WG** – A subgroup of the Technical Committee [“TC”]), composed of individuals representing Members of the TC and invited guests, with the specific intent of solving some particular interoperability problem or problems in a particular technology domain for recommendation to the TC.

### **III. Specification Process Description**

**(a) Introduction.** We made no fundamental change to existing OGC philosophy. However, we did make procedural changes to conform to prevailing practice. We also created a new set of documentation for submitting, disclosing and voting on the adoption of technology, in an effort to ensure that all reasonable and necessary ownership rights in contributed technology are obtained.

Simultaneously, we provided protection to Members that contribute technology, through appropriate disclaimers of liability regarding performance issues or for inadvertent infringement of third party IPR. The general terms of the IPR policy may be found in Exhibit A, Policy Regarding Intellectual Property Rights.

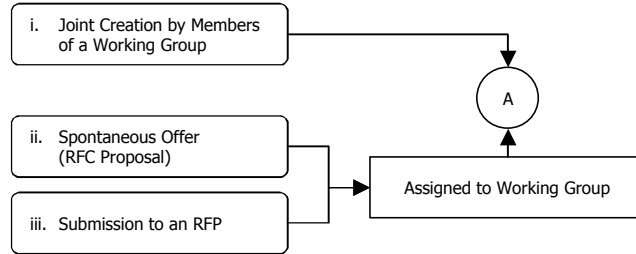
Section 5 of the *OGC Technical Committee Policies & Procedures* governs the detailed procedural rules of the Technical Committee process. The current version of the document may

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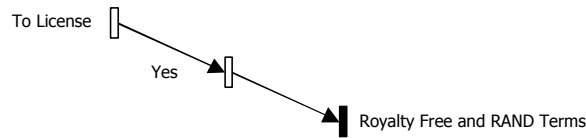
be downloaded from <http://www.opengis.org/ogcSpecsPrg.htm> by selecting “Specification Development Process (.pdf).”

Note that the Specification Development Process may begin in one of three ways: (i) Members of a Working Group jointly create a Specification or a Specification version, (ii) a Voting TC Member spontaneously offer a Request for Comment (“RFC”) proposal, or (iii) a Working Group issues a Request for Proposal (“RFP”), with one or more of the resulting submissions being adopted as the building blocks for part or all of the final submission.



**Beginning of the Specification Development Process - the Submission Process**

**(b) Submission Process.** Under the *Bylaws of Open GIS Consortium, Inc.*, only a Voting Member may submit technology and therefore be a “Submitter.” At the time of submission, Submitters must assure that the IPR inherent in their submission will, if the submission is incorporated into an Adopted Specification, be made available under license to all implementers, Members and non-Members alike.



**Submitter Licensing Commitment at Time of Submission**

The Submitter must state that if its submission is adopted and incorporated into a Adopted Specification, that it shall make such license(s) available without a royalty or other fee and shall also make such license available on “reasonable and non-discriminatory (“RAND”) terms.” Such license(s) need apply only with respect to IPR rights that would be necessarily infringed by the implementation of the required elements of a Adopted Specification.

“Reasonable” in this context means in keeping with general industry practices, so that adoption of a Proposed Specification will not be impeded by unduly restrictive or extortionate terms. “Non-discriminatory” means that all who wish to implement the Proposed Specification, if adopted, must be provided with a license, and that the terms of that license will be reasonably uniform across all licensees, after taking into account relevant differences in circumstances.

To assure this result, a Submitter is required to complete, sign and deliver a **Submission of Technology Form**, a copy of which is attached as Exhibit B. You will note that this is a high-level form that leaves committing to the actual license terms to a later date.

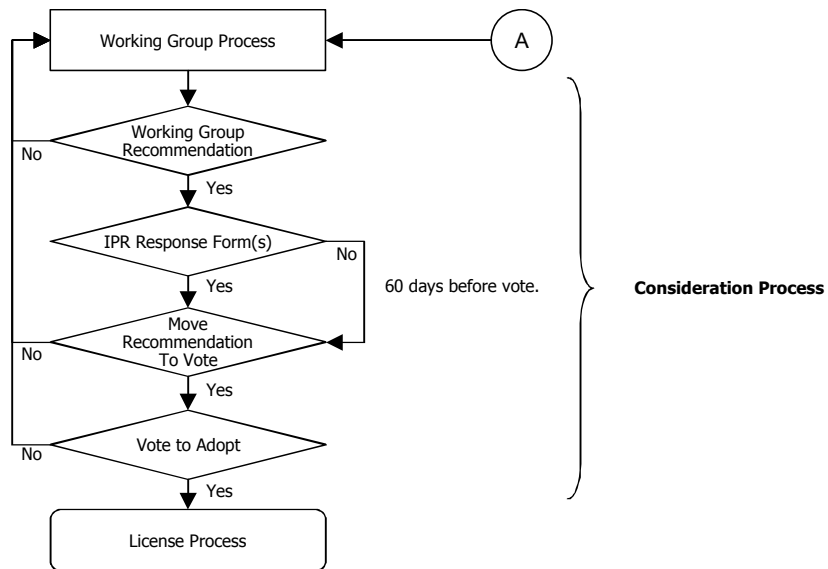
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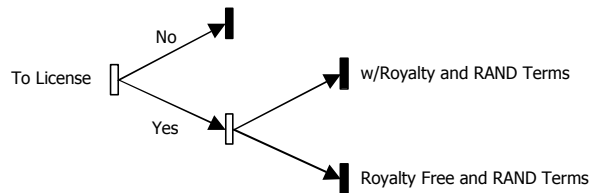
A Submitter is required to execute this short, high-level form at the time of submission to protect the Technical Committee and/or relevant Working Group from investing its time on a submission that would have to be later withdrawn because of unreasonable or discriminatory terms. Also, a submission of technology without a commitment to license would have no value to OGC or its Members.

Although the submitted technology may or may not ultimately be incorporated in the Adopted Specification, the Submitter cannot revoke the commitment made in the Submission of Technology Form until such time as the submission is either formally rejected or the process is completed without the inclusion of any aspect of the contribution in the Adopted Specification.

**(c) Consideration Process.** As is the case with other consortia, OGC believes that during the consideration process, it is fair and appropriate for Members to state whether they will provide a license to those wishing to implement a Proposed Specification under review, if it is adopted. This license would only apply to IPR that would necessarily be infringed by an implementation of the Proposed Specification in its final adopted form, can be made available with or without cost, and must be on RAND terms.



Therefore, during the consideration process, Members have the options to identify the infringement that the Member believes would result from implementing the Specification and state that it does not agree to provide a license, that it will provide a license for a royalty or other fee, or that it will make a license available without a royalty or other fee.



**License Options for Members with Affected IPR during Consideration Process**



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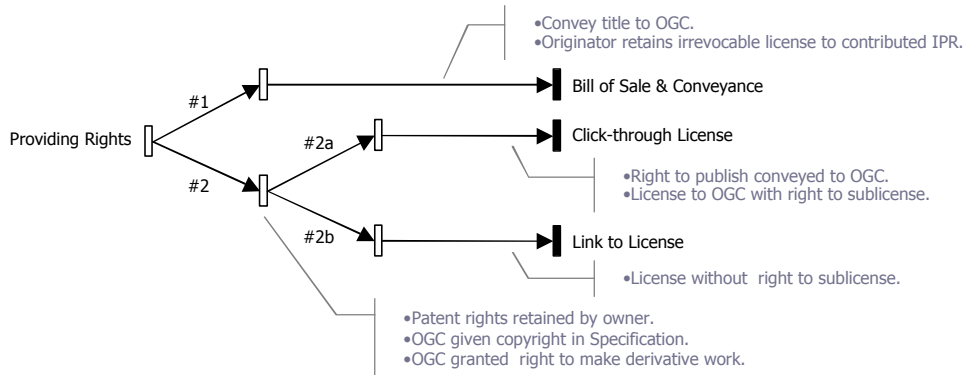
The options not to license or to provide a license for a royalty or other fee are available to non-submitting Members so that Members become fully informed of infringement and / or licensing issues early in the process. Thus, a submission by one Member cannot compel another Member to give up commercially valuable rights purely as a result of its participation in the adoption process.

This requirement for IPR owners to identify potential IPR infringement early in the consideration process will often permit the Technical Committee and/or Working Group to design solutions around the claimed IPR.

Exhibit C is the **IPR Response Form** that OGC provides to Members, along with a copy of the Proposed Specification being considered for adoption, not less than 60 days prior to an impending vote. Members are required to sign and return the form by the time the vote commences. This same process is employed when a recommendation is made to adopt a Specification revision.

***It is important that each Member return a completed IPR Response Form prior to the scheduled vote. Failure to do so will be deemed to be an agreement by that Member to license IPR on RAND terms, with or without a royalty or other fee. Also, note that the IPR Response Form requirement applies to all Members involved in the consideration process.***

**(d) License Process.** When a Proposed Specification has been adopted, i.e., becomes an Adopted Specification, it is time for any Submitters and Members with affected IPR to provide the promised rights to their IPR. Those rights can be provided in one of two ways:



**License Process**

The first method is by outright conveyance, in which case outright title passes to OGC. If desired, the conveyor may retain a perpetual, fully paid, irrevocable license to the contributed IPR. The **Bill of Sale and Conveyance** document used to make this technology transfer will be negotiated between OGC and the Submitter at the time of transfer.

The second method involves the granting of one of two types of license. The first gives OGC the right not only to publish the Adopted Specification at its website and elsewhere, but also to sublicense implementation rights as well. The **License with Right To Sublicense** will be negotiated between OGC and the Submitter at the time of transfer, as would the second type of agreement, the **License without Right to Sublicense**. The latter type of license would only permit OGC to publish the Adopted Specification, and would direct would-be implementers to the

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licensor's website to obtain an implementation license. OGC greatly encourages the use of the first type of license, the *License with Right To Sublicense*, in order to permit implementers the convenience of "one-stop shopping", and thus facilitate adoption of OpenGIS Specifications (especially where the IPR of more than one licensor is involved).

In both cases, all patent rights remain with the owner. OGC, however, is given ownership of the copyright in the Adopted Specification itself, as well as the right to make derivative works. And in the case of both an outright transfer of ownership to OGC as well as with either type of license, the Submitter is permitted to disclaim any warranty of non-infringement or performance. The Submitter is requested, however, to state to the best of its knowledge any infringement issues known to it.

**(e) Implementation Process.** If an implementer is permitted the right to obtain necessary license rights at the OGC website, it is required to click on an *Implementer License* in the form of Exhibit D. This "click through" license, among other things, disclaims any liability to the implementer for infringement or performance issues.

**IV. Other Consortium Business**

Other Consortium business such as Interoperability Program initiatives and routine Working Group activities, including in-person, teleconference, and electronic meetings, will be subject to patent calls. Documents submitted into these processes for consideration will be the sole subject of the patent calls. OGC will issue a patent call via verbal notification in each meeting, and will issue an email distributed to all meeting participants prior to convening the meeting (see Policy Regarding Intellectual Property Rights, Section 1.2). Information regarding the documents submitted, attendees of sessions, and results of patent calls will be maintained as record. Further, organizations and individuals that work in Interoperability Initiatives or other OGC projects, as Sponsors, Participants, or Consultants, are subject to the Ownership and Rights clauses of such agreements, which are governed by this policy.

**V. Summary**

The documents and process described above are intended to protect the rights of all Members while permitting the achievement of OGC goals. At the same time, they are intended to permit the OGC technical process to proceed without violation of applicable law or negative impact on Member recruitment and retention.

The OGC IPR process will continue to operate under the supervision of the Board of Directors, and will evolve as necessary as the internal needs of OGC and as external legalities and trade practices change.