



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

**EXHIBIT A  
POLICY REGARDING INTELLECTUAL  
PROPERTY RIGHTS**

Revised 17 April 2003

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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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**Policy Regarding Intellectual Property Rights**

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This policy covers the issues of patent, patent applications, copyright, trademark, trade secret, and other intellectual property rights (collectively, "IPR") for Specifications created by Open GIS Consortium, Inc. ("OGC"). This policy is implemented through the OGC<sup>SM</sup> Technical Committee Policies & Procedures and the Interoperability Program Standard Operating Policies, Processes, and Procedures documents (the "P&P Documents"). To the extent of any inconsistency between this document and the P&P Documents, the terms of this document shall prevail.

**1. Patents and Other IPR Generally**

**1.1 Calls for Patents**

(a) **Overview.** In order to lessen the possibility that an Adopted Specification or other technology that might infringe on a patent or other IPR without permission, OGC will periodically issue calls for Members to disclose patents or other IPR ("patent calls") which are owned by them, or of which they might be aware, which might be infringed by the implementation of a Specification proposed for adoption or revision. Such calls for patents shall be generally made at every meeting as follows:

(i) Those responding to a Request for Proposal ("RFP") or submitting a proposal for consideration as a Request for Comment ("RFC"), ("Submitters"), must agree, at the time of submission, to provide royalty free license rights to all who would desire to implement their submission, if the submission is incorporated into an Adopted Specification or amendment.

(ii) All OGC Members must indicate, on or before the date that a recommendation to adopt is taken, whether they will provide license rights to all who would desire to implement a Proposed Specification or amendment with or without charge, or whether they will refuse to grant needed license rights.

Should a Member indicate that it will withhold license rights, OGC will decide whether it is possible to design around the infringement, or will agree upon other appropriate action. The process of responding to patent calls is described in greater detail in Section 1.1(d) below.

**(b) Detailed Process**

(i) At Submission. Each respondent to an RFP or submitter of an RFC Proposal must respond at the time of contribution:

(1) by irrevocably agreeing that it will, on request, license all IPR which are owned by it and which might be infringed by an implementation of those elements of an Adopted Specification or amendment which are based on its submission, on a perpetual, non-exclusive and worldwide basis, to those (Members and non-Members alike) desiring to use such patented technology or other IPR for the purpose of implementing such elements of the Adopted Specification or amendment; provided, however, that such license shall extend only to the extent necessary to implement such elements of the Adopted Specification or amendment and to the extent such implementation would necessarily infringe such patented technology or other IPR, and that such license shall be without charge, and will otherwise be under reasonable terms and conditions which are free of unfair discrimination;

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(ii) At Adoption. Each Member at the time of a vote to recommend the adoption of a Proposed Specification or amendment must respond in one of the following three ways when requested:

(1) by irrevocably agreeing that it will, on request, license all IPR which are owned by it and which might be infringed by an implementation of the Proposed Specification or amendment, if adopted, on a perpetual, non-exclusive and worldwide basis, to those (Members and non-Members alike) desiring to use such patented technology or other IPR for the purpose of implementing such Proposed Specification or amendment; provided, however, that such license shall extend only to the extent necessary to implement such Proposed Specification or amendment and to the extent such implementation would necessarily infringe such patented technology or other IPR, and that such license shall be without charge, and will otherwise be under reasonable terms and conditions which are free of unfair discrimination;

(2) by irrevocably agreeing that it will, on request, grant a similar license for a royalty or fee.

(3) by identifying any patent(s), patent applications, and/or other IPR which are owned by it which it asserts would be infringed by an implementation of the Proposed Specification or amendment, and the portion of the Proposed Specification or amendment which would result in the infringement, and indicating that no guarantee of license rights is being made (or that such rights will in fact be denied). In the case of a published patent application, the application shall be identified. In the case of an unpublished application, the respondent shall indicate such information as possible to identify the nature of the asserted infringement without jeopardizing any of its trade secrets in the event the patent application is not granted in whole or in part. The Member must simultaneously choose one of the options set forth in subsections 1.1(b)(ii)(1) or (2) above with respect to all IPR (except that IPR specifically identified in accordance with this subsection) which are owned by it and which might be infringed by an implementation of the proposed specification or amendment.

**(c) Third Party Adopter Claims of Infringement.** In the event that any implementer of a Specification or amendment of a Specification asserts that it is the owner of a patent or other IPR which would necessarily be infringed by the implementation of any required portion of such Specification or amendment, and refuses to license such patent or other IPR to all Members and non-Members alike wishing to implement such Specification or amendment, on reasonable and non-discriminatory terms, then no Member shall be bound by any commitment made by it under Subsections 1.1(b)(ii)(1) or (2) above as to such asserter, and any license rights relating to such Specification or amendment which such Member may have previously granted to such asserter may be revoked.

**(d) Failures to Respond to Calls.** In the event that any Member (i) fails to respond to a patent call, (ii) fails to complete and return an Assertion Form, or (iii) returns such a form and indicates that it will not guarantee to provide necessary license rights, but does not specify, in the manner required, the IPR owned by it which it asserts would necessarily be infringed by implementation of the Proposed Specification or amendment under review, then such Member shall be deemed to have elected to license its IPR on reasonable terms and conditions which are free of unfair discrimination. Such Member must subsequently choose terms as set forth under Subsections 1.1(b)(ii)(1) or (2) above.

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**(e) Patent Call Text.** In order to lessen the likelihood of unknowingly creating work product that, if used and/or implemented, would infringe the intellectual property rights of Members or third parties, the following statement shall be read at the beginning of every in-person meeting, and may be communicated at such other times and in such other manners (e.g., by email) as may seem appropriate.

“Please be aware that this meeting is being held under the Policy Regarding Intellectual Property Rights adopted by Open GIS Consortium. If you do not have a copy of this policy, please see me during this meeting. You may also view and download a copy of that policy at the Intellectual Property Rights section of the OGC website.

At this time, I would ask that anyone in attendance inform me if they are personally aware of any claims under any patent applications or issued patents which would be likely to be read upon by an implementation of the specification or other work product which is the subject of this working group. You need not be the inventor of such patent or patent application in order to inform us of its existence, nor will you be held responsible for expressing a belief which turns out to be inaccurate.”

## **1.2 Document Notations**

The OGC encourages all interested parties to bring to its attention, at the earliest possible time, the existence of any intellectual property rights pertaining to Specifications. For this purpose, each Specification document shall include the following invitation:

"The OGC invites any interested party to bring to its attention any copyrights, patents or patent applications, or other proprietary rights which may cover technology that may be required to practice this specification. Please address the information to the OGC Specification Program Executive Director."

### **1.2.1 Notation When Patents are Identified**

When patents or other IPR have been identified for drafts of Proposed Specifications subject to Member comment, or thereafter with respect to already published Adopted Specifications, the following notice shall be included in the introduction:

“OGC draws attention to the fact that it is claimed that compliance with this specification may involve the use of a patent or other intellectual property right (collectively, "IPR") concerning (...subject matter...) given in (...sub clause...). OGC takes no position concerning the evidence, validity and scope of this IPR.

The holder of this IPR has assured OGC that it is willing to [refer to 1.1 b(i) and (ii) from above as applicable]. In this respect, the statement of the holder of this IPR is registered with OGC. Information may be obtained from:

[...Name of holder of right...]  
[...Address...]

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Attention is drawn to the possibility that some of the elements of this OGC specification may be the subject of IPR other than those identified above. OGC shall not be held responsible for identifying any or all such IPR, and has made no inquiry into the possible existence of any such IPR.

THIS SPECIFICATION IS BEING OFFERED WITHOUT ANY WARRANTY WHATSOEVER, AND IN PARTICULAR, ANY WARRANTY OF NON-INFRINGEMENT IS EXPRESSLY DISCLAIMED. ANY IMPLEMENTATION OF THIS SPECIFICATION SHALL BE MADE ENTIRELY AT THE IMPLEMENTER'S OWN RISK, AND NEITHER OGC, NOR ANY OF ITS MEMBERS OR SUBMITTERS, SHALL HAVE ANY LIABILITY WHATSOEVER TO ANY IMPLEMENTER OR THIRD PARTY FOR ANY DAMAGES OF ANY NATURE WHATSOEVER DIRECTLY OR INDIRECTLY ARISING FROM THE IMPLEMENTATION OF THIS SPECIFICATION.”

**1.2.2 Notation When Infringement is Alleged**

In the event that the owner of any IPR has asserted that infringement would result from the implementation of a Specification, and such owner has refused to grant a license pursuant to 1.1(a) or (b) above, then the second paragraph of the above notice shall be replaced or supplemented, as appropriate, with the following:

“The holder of such IPR has refused a request by OGC that it agree to make a license available for the purpose of implementing this specification. Information may be obtained from:

[...Name of holder of right...]  
[...address...]”

**1.3 Patent Searches**

In no case shall OGC be obligated to conduct searches for patents or other IPR that would be infringed by the implementation of a Specification or an OpenGIS Specification.

**1.4 Patents Revealed after Publication**

In the case where IPR is revealed following publication of an Specification, and the holder of such IPR claims that it covers items included in the Specification, such holder will be asked to license the necessary IPR in the manner outlined in 1.1(b)(i) or (ii) above. If such a license cannot be obtained, the Specification shall be referred back to the relevant Working Group for further consideration, as appropriate.

**2. Copyrights**

The copyright for all OGC draft and published Specifications shall belong to OGC.

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**2.1 Contributions of Copyrighted Materials**

Those who contribute their copyrighted materials to the Consortium shall retain copyright ownership of their original work, while at the same time granting the Consortium the right to modify and add to such material, and exercise all distribution and other rights as the owner of such derivative work under its own copyright.

**3. Trade Secrets**

OGC Members will not be expected to reveal trade secret information to OGC, nor will they be asked to sign non-disclosure agreements by OGC.

OGC cannot be held responsible for the disclosure of any Member or non-Member's trade secret regardless of the circumstances.

**4. Trademarks**

**4.1 OGC Trademarks**

OGC trademarks, registered or otherwise, are the property of OGC. Their use shall be governed by such policies, procedures and guidelines as shall be approved by OGC from time to time, and applicable law.

**4.2 Non-OGC Trademarks**

The use of trademarks not owned by OGC shall be in accordance with applicable law and such contractual requirements as may be imposed by the owners of such trademarks.

**5. Submissions and Responses to Calls**

All submissions of technology for adoption consideration, and all responses to calls for patents, shall be on such forms implementing the rules set forth in this Policy, as OGC shall from time to time choose to employ. This policy may be supplemented at any time by such additional rules as the Board of Directors may elect or approve, including with respect to determining those who shall be required to answer a call for patents, and the consequences, if any, for any failure to use such form, or to answer a call.