                        Example IPR License Terms
                       draft-terriberry-ipr-license-00

Abstract

   This draft gives provides an example set of licensing terms for use
   in IPR disclosures that are compatible with the goals of the proposed
   video-codec working group for further discussion and refinement by
   participants at the IETF. Although usage of such a license is
   strictly voluntary, the hope is that getting agreement on a set of
   terms before the bulk of the work begins will allow contributors to
   use a common license and minimize the amount of legal analysis that
   must be performed in order to deploy the codec.

Status of This Memo

Copyright Notice

   include Simplified BSD License text as described in Section 4.e of
   the Trust Legal Provisions and are provided without warranty as
   described in the Simplified BSD License.

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1. Introduction

   The goal of this license, using the words of the current video-codec
   charter [1], is to allow the contribution of IPR to a standard which
   "can be widely implemented and easily distributed among application
   developers, service operators, and end users. The objective is to
   produce a codec that can be implemented, distributed, and deployed by
   open source and closed source software and hardware vendors, without
   the need to request a license, enter into a business agreement, pay
   licensing fees or royalties, or attempt to adhere to other onerous
   conditions or restrictions."

   This goal, particularly the compatibility with open-source licenses,
   precludes many forms of normal IPR licensing, including the
   requirement for each licensor to explicitly request a license or
   perform some overt act to activate a license. The terms here also
   attempt to provide some amount of safety to those implementing
   standard from others also implementing the same standard, through the
   use of a defensive termination clause.

   Although this license is designed specifically for use with the
   video-codec effort, the terms have been kept generic enough to allow
   it to be used elsewhere.

2. The License

2.1. License Grant

_____ ("Licensor") hereby grants to you a perpetual, worldwide, non-exclusive, royalty-free, irrevocable (except as stated in the "Termination" section below) license to make, have made, use, sell, offer to sell, import and otherwise transfer any Implementation or portion thereof, under all Necessary Claims of Licensor (the "License").

2.2. Definitions

"Original Specification" means draft-ietf-_____.

"Reference Implementation" means the implementation of the Original Specification made publicly available at _____.

"Specification" means the Original Specification or, at your option, any future update or new version of that specification issued as an RFC (Request for Comments) by the IETF (Internet Engineering Task Force).

"Implementation" means any implementation (including the Reference Implementation) that complies fully with all non-optional portions of the Specification.

"Licensee" means any party that has received the License, provided the License to such party has not been terminated under the "Termination" section below.

"Necessary Claims" of a party means all claims of patents or patent applications that, (a) currently or at any time in the future, (i) are owned or controlled by such party or its Affiliates, or (ii) for which such party or its Affiliates has the authority to grant the License without the requirement to pay a royalty to any party other than an Affiliate, and (b) (i) for which there is no commercially viable means of implementing the Original Specification, including any optional portion thereof, without infringing such claims; or (ii) are infringed by the use of the Reference Implementation.

"Affiliate" is any entity controlling, controlled by, or under common control with a party.

2.3. Termination

If you, directly or indirectly, including via an Affiliate, subsidiary, agent, or exclusive licensee, (a) file an action for infringement of a Necessary Claim, or (b) make any other written claim of infringement of a Necessary Claim, against any Licensee alleging that any Implementation, in whole or in part, constitutes direct or contributory patent infringement, or inducement of patent

   infringement, then any patent rights granted to you and your
   Affiliates under this License shall automatically terminate
   retroactively as of the date you first received the License.

3. Discussion

3.1. Scope of the Grant

   The scope of the grant is defined by two pieces: a specific draft
   (the "Original Specification") and a specific implementation (the
   "Reference Implementation"). The idea is to cover both the
   algorithms and methods that are required for interoperability (e.g.,
   for a video codec, the decoder specification), plus at least one set
   of algorithms and methods which can produce a useful implementation
   (such as an encoder, packet loss concealment (PLC) in the decoder,
   etc.). Although people may still compete on making more optimized
   decoders, better encoders or better PLC, they are guaranteed that use
   of the reference implementation, at least, is safe.

   The "Original Specification" and "Reference Implementation" which
   define the scope of the grant are also kept separate from the
   "Specification" and "Implementation" which define how the licensed
   claims may be used. This allows change control over what the
   standard says to remain with the IETF, while ensuring that the scope
   of the grant is not open-ended, so parties contributing their IPR
   know what they are giving.

3.2. Termination

   The termination clause protects a Licensee from infringement claims
   by other Licensees. Any Licensee that tries to assert patent claims
   against another Licensee will lose their own license, and find
   themselves exposed to potential lawsuits from all other Licensees.
   This is designed to minimize defections after the standard is
   deployed.

3.3. Open Issues

3.3.1. A Reciprocity Clause

   The license currently does not define a "reciprocity clause", wherein
   Licensees give other Licensees an explicit license back to any IPR
   they might own. Instead it relies on the termination clause to
   achieve a similar, though not identical effect. Reciprocity clauses
   have become more normal in recent patent licenses, and it may be
   worth adding one here.

3.3.2. Defensive Suspension

We have received some early feedback that our defensive termination
clause may be too strong to qualify as RAND. Another alternative is
defensive suspension, wherein parties simply agree not to enforce
their patents unless they themselves are sued. We are still studying
this issue.

[4]. Acknowledgments

Thanks to those who provided feedback on early drafts of this
license.

[5]. References

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