

Smart TV Alliance Intellectual Property Rights Policy

The Smart TV Alliance, Inc. (the “Alliance”) has adopted the following Intellectual Property Rights Policy (“IPR Policy”). By joining the Alliance, all Alliance Members agree to the terms of this IPR Policy as a condition of membership in the Alliance. Any capitalized terms not defined herein shall have the respective meanings specified in the Alliance Bylaws (the “Bylaws”).

ARTICLE 1: DEFINITIONS

The definitions in the Bylaws are incorporated herein by reference. The following definitions shall additionally apply to this Intellectual Property Rights (“IPR”) Policy:

1.1 Affiliate

means any entity that is directly or indirectly controlled by the subject entity. For purposes of this definition “control” means direct or indirect ownership of, or the direct or indirect right to exercise (a) more than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of the subject entity; or (b) more than fifty percent (50%) of the controlling interest representing the right to make the decisions for the subject entity. References in this IPR Policy to a Member’s Necessary Claims includes all Necessary Claims owned, controlled or licensable by the Member and by all Affiliates of such Member.

1.2 Compliant Portion

means only those specific portions of products (hardware, software or combinations thereof) or services that implement and are compliant with all relevant portions of a Final Specification.

1.3 Contribution

means a submission to or for a Work Group, Committee or the Board of Directors (a) for inclusion in Marketing Materials or (b) proposing an addition to or modification of an existing Specification or a new Specification or portion thereof, provided that the submission is either (i) submitted in writing (including a writing in electronic medium) or (ii) stated orally, memorialized with specificity in the written minutes of a Work Group, and attributed in the meeting minutes to the submitting Member, provided that the minutes are promptly provided to the individual representing the Member, unless the submitting Member withdraws its submission in writing as soon as practicable and in any event, no later than forty-five (45) days of receipt of such written minutes.

1.4 Corporation

means the Smart TV Alliance, Inc.

1.5 Draft Deliverables

means Draft Specifications, Draft Test Materials and Draft Informational Documents.

1.6 Draft Specifications

means technical interface specifications that are under development, revision, or consideration by the Corporation, provided that the specification must be consistent with the Corporation's Purpose as defined in the Bylaws.

1.7 Draft Informational Documents

means any materials, in any form, including but not limited to marketing, educational, and training materials, market requirements documents, informative guidelines, white papers, and Alliance policies and procedures that are under development, revision, or consideration by the Corporation, provided that each of the above must be consistent with the Corporation's Purpose as defined in the Bylaws.

1.8 Draft Test Materials

means any draft test suites, test specifications, test procedures, test tools and the like that are developed by a Working Group for the purpose of testing products that incorporate Compliant Portions to determine that such product complies with a Specification.

1.9 Final Specification

means a Draft Specification consistent with the Purpose of the Corporation that has been approved in final form by the Board of Directors in accordance with the Bylaws and designated by the Board of Directors as a Final Deliverable.

1.10 Final Informational Document

means a Draft Informational Document consistent with the Purpose of the Corporation that has been approved in final form by the Board of Directors in accordance with the Bylaws and designated by the Board of Directors as a Final Informational Document.

1.11 Final Test Material

means a Draft Test Material consistent with the Purpose of the Corporation that has been approved in final form by the Board of Directors in accordance with the Bylaws and designated by the Board of Directors as a Final Informational Document.

1.12 Final Deliverable

means Final Specifications, Final Test Materials and Final Informational Documents.

1.13 Marketing Materials

means those materials used by the Alliance to perform outreach and marketing activities, including press releases, presentations and the like.

1.14 Necessary Claims

means those claims of all patents and patent applications, other than design patents and design registrations, throughout the world which a Member or its Affiliates has the right, any time during the term of membership, to grant licenses of the nature agreed to be granted herein without such grant resulting in payment of royalties or other consideration to third parties (except for payments to Affiliates or employees), which claims are necessarily infringed by an implementation of a Final Specification adopted and approved for release by the Corporation, where such infringement could not have been avoided by another commercially feasible non-infringing implementation of such Final Specification. Necessary Claims do not include any claims other than those set forth above even if contained in the same patent or patent application as one or more Necessary Claims.

1.15 RAND License

means a non-exclusive license on fair, reasonable and non-discriminatory terms and conditions, without a right to sublicense, to make, have made, use, import sell, offer to sell, license, promote or otherwise distribute and dispose of Compliant Portions of products or services, provided that such license shall not extend to any part or function of a product or service in which a Compliant Portion is incorporated that is not itself part of the Compliant Portion.

1.16 RAND-Licensed Necessary Claims

means those Necessary Claims that are required to be licensed under Section 5.2 hereof.

1.17 Specification

means any Draft Specification or Final Specification.

1.18 Test Materials

means any Draft Test Materials approved for release by the Board of Directors, and any updates or revisions adopted and approved for release by the Board of Directors.

ARTICLE 2: CONFIDENTIALITY

SECTION 2.1 LIMITATION ON THE SCOPE OF DISCLOSED INFORMATION

The Members acknowledge that they will not disclose or exchange information as part of Corporation activities among themselves unless such disclosure is consistent in all respects with the lawful purposes of the Corporation. All information disclosed by or on behalf of any Member in connection with the Corporation's activities shall be deemed non-confidential except as may be provided below or as otherwise agreed to in a written agreement between the affected parties.

SECTION 2.2 CONFIDENTIAL INFORMATION

From time to time a Member may deem it necessary to disclose information to the other Members or to the Corporation which such Member considers confidential or proprietary ("Confidential Information"). In such instances the relevant information may be disclosed in confidence and shall be considered Confidential Information of the disclosing party if, and only if, the information is specifically designated as Confidential Information by the disclosing party at the time of disclosure; provided, however, that information shall be deemed confidential if a Member inadvertently discloses Confidential Information which was not identified as confidential at the time of disclosure but notifies all Members to whom such Confidential Information has been disclosed (in accordance with the notification process in this Article 2 and within ten (10) days of the date of the inadvertent disclosure) of the disclosing Member's intention to maintain the confidentiality of such previously disclosed Confidential Information and the receiving Members have not disseminated the subject information outside of their Member organization prior to receiving such notice. Any such designation shall be effected by (1) marking any information disclosed in writing in a manner which indicates it is the Confidential Information of the disclosing party; or (2) by orally indicating that any information disclosed orally is the Confidential Information of the disclosing party and then within ten (10) days providing all other Members with a written summary of the orally disclosed Confidential Information so that such Confidential Information is more easily identified. By disclosing Confidential Information a Member agrees that should any such Confidential Information be necessarily or inferentially disclosed by a Specification or Marketing Material or other material adopted by the Corporation, such Member shall allow publication of such Specification or Marketing Material or other material.

All information disclosed by Members prior to the adoption of this IPR Policy directly for the purposes of the Corporation shall be governed by the provisions of this Section 2.2; provided that Members shall have ten (10) days following the adoption of this IPR Policy to provide a written summary of all Confidential Information that had been orally disclosed prior to the date of such adoption.

All information developed by the Corporation shall be deemed the Confidential Information of the Corporation until made publicly available. All works in progress, minutes of Board of Directors' meetings, minutes of Work Groups and Committees, Specifications, Marketing Materials and attorney work product shall in all cases be deemed Confidential Information of the Corporation unless and until made publicly available without restriction by the Corporation.

SECTION 2.3 NONDISCLOSURE

With respect to Confidential Information, the receiving party agrees, for a period of three (3) years, to use the same care and discretion to avoid disclosure, publication, and dissemination outside the receiving party and its subsidiaries, contractors and consultants as the receiving party employs with its own Confidential Information of a like kind, but no less than reasonable care. Any disclosure by a receiving party to its subsidiaries, contractors or consultants shall be subject to an obligation of confidentiality at least as restrictive as those contained in this Article 2. The foregoing obligation shall not apply to any information which is: (1) already known by the receiving party prior to disclosure; (2) publicly available through no fault of the receiving party; (3) rightfully received from a third party without a duty of confidentiality; (4) disclosed by the disclosing party to a third party without a duty of confidentiality on such third party; (5) independently developed by the receiving party; (6) disclosed pursuant to the order of a court or other authorized governmental body, or as required by law, provided that the receiving party provides reasonable prior written notice to the disclosing party, and cooperates with the disclosing party, so that the disclosing party has the opportunity to oppose any such order, unless the receiving party is precluded from providing such notice by the terms of such order; or (7) disclosed by the receiving party with the disclosing party's prior written approval.

Notwithstanding anything to the contrary herein, any Member shall be free to use the residuals of Confidential Information for any purpose including use in the development, manufacture, marketing and maintenance of its products and services, subject only to the obligations herein with respect to disclosure of such Confidential Information to third parties. The term "residuals" means Confidential Information in nontangible form that may be retained in the unaided memories of individuals who have had rightful access to such Confidential Information under this provision of this IPR Policy. It is understood that receipt of Confidential Information under this IPR Policy shall not create any obligation in any way limiting or restricting the assignment and/or reassignment of any employees of a Member within such Member's organization. However, this Section 2.3 shall not be deemed to grant to any party a license under the other party's copyrights or patents.

Nothing contained herein shall preclude the Corporation from entering into Nondisclosure Agreements with third party non-Members. All Members having access to the confidential information of such non-Members shall comply with the terms of such Nondisclosure Agreements.

SECTION 2.4 EFFECT OF MEMBER WITHDRAWAL

After withdrawal from the Corporation for any reason, a former Member shall continue to be bound by this Article 2 with respect to disclosures of Confidential Information made prior to the date of such withdrawal.

ARTICLE 3: COPYRIGHTS

Each Member shall be deemed automatically to have granted to the Corporation a worldwide, perpetual, irrevocable, nonexclusive, nontransferable copyright license to reproduce, create derivative works, distribute, display, perform and sublicense the rights to reproduce, distribute, display and perform the Contributions of such Member for the purposes of developing, publishing and distributing Specifications, Marketing Materials, Test Materials, development tools and related materials.

ARTICLE 4: TRADEMARKS

In the event that the Corporation proposes to adopt any other name or logo as a trademark, service mark, certification mark or trade name (collectively "Trademarks"), the Corporation shall notify the Members in writing of the proposal. The Corporation shall take such steps as the Board of Directors deems necessary and proper to protect its rights under such Trademarks adopted for use by the Corporation. In furtherance thereof, the Board of Directors shall establish and implement reasonable conditions and procedures for the licensing and use of such Trademarks, demonstrably free of any unfair discrimination among the Members or against non-Members.

ARTICLE 5: PATENT LICENSING POLICY

SECTION 5.1 SPECIFICATION NOTICE, REVIEW AND MEMBER WITHDRAWAL

(a) Review

Upon receipt of a Draft Specification from the Technical Steering Committee, each Member, on behalf of itself and its Affiliates, shall use commercially reasonable efforts to disclose, in writing to the Technical Steering Committee, the existence of any claims of any of its patents or patent applications that may be Necessary Claims that are personally known to the representative acting on behalf of such Member with respect to the Corporation. Such disclosure shall occur within forty-five (45) days of the distribution of the Draft Specification to the individual acting on behalf of the Member. While there is no requirement for a Member to review their patent portfolio for Necessary Claims beyond this disclosure review, Members are put on notice that unless they withdraw from the Corporation in accordance with the provisions of Section 5.1 and 5.6, below, the Member is committing to the licensing provisions of Section 5.2, below.

(b) Withdrawal

Subject to such additional requirements as are specified in the Bylaws or imported by applicable law, any Member may withdraw from membership in the Corporation pursuant to this subsection, if that Member determines that a Draft Specification contains RAND-Licensed Necessary Claims which that Member is unwilling to license to the other Members pursuant to Section 5.2, below. A Member wishing to exercise the right to withdraw under this provision must deliver notice of withdrawal not later than forty-five (45) days after the distribution of the relevant Draft Specification to the individual acting on behalf of the Member.

(c) New Members

If, during the review period stated in Section 5.1(a) above, a prospective Member shall apply for Membership in the Corporation, then subject to the execution of such confidentiality and/or nondisclosure agreements as the Corporation may determine necessary, such prospective Member shall be permitted not less than forty-five (45) days to review the Draft Specification then under review for any and all Necessary Claims and to agree in separate affirmative writing to be committed to the licensing provisions of Section 5.2, below, as to such pending Draft Specification if it is adopted by the Corporation. Failure to provide such written affirmation shall be deemed a withdrawal of the prospective Member's application for membership.

SECTION 5.2 LICENSING OF MEMBER PATENT RIGHTS

When a Member or its Affiliate makes a Contribution to a Specification of the Corporation, including revisions thereto, or when the Corporation adopts and approves for release a Final Specification, above, the Member hereby agrees to grant, or cause its Affiliate to grant, to other Members and their Affiliates and to non-Members implementing such Specification under reasonable terms and conditions (which may include defensive suspension) that are demonstrably free of any unfair discrimination, a nonexclusive, nontransferable, worldwide RAND License under its Necessary Claims to allow such Members to make, have made, use, import, offer to sell, lease and sell and otherwise distribute Compliant Portions, provided that such agreement to license shall not extend to: 1) Necessary Claims that pertain solely to any part or function of a product or service in which a Compliant Portion is incorporated that is not itself part of the Compliant Portion, nor 2) Necessary Claims that pertain solely to specifications published by persons other than the Corporation and referenced in the Final Specification. Notwithstanding the foregoing, no Member shall be required to grant a license pursuant to this Section 5.2 with respect to any enabling technologies that may be useful in the making or use of any product or service or portion thereof that complies with a Final Specification, but that are not themselves necessarily infringed by any implementation of the Final Specification (e.g., semiconductor manufacturing technology, compiler technology, object-oriented technology, basic operating system technology, database technology). Each Member covenants on behalf of itself and its Affiliates that Member and its Affiliates will not transfer or encumber, and represents that Member and its

Affiliates have not transferred or encumbered, patents having what would otherwise be RAND-Licensed Necessary Claims for the purpose of circumventing this Section 5.2.

SECTION 5.3 RECIPROCITY

No Member shall be entitled to claim the benefit of Section 5.2, above, concerning the grant of patent licenses between Members if that Member is itself in breach of its obligation to grant, or cause its Affiliate to grant, licenses pursuant to Section 5.2.

SECTION 5.4 LIMITED COVENANT FOR TESTING

Each Member hereby agrees not to assert, and to cause its Affiliates not to assert, any patent it owns or controls or that its Affiliates own or control, against any person or entity based on such person or entity testing a product using or implementing the Test Materials to determine if the product complies with a Specification.

SECTION 5.5 RETENTION OF RIGHTS

Nothing contained in this Article 5 shall be deemed as requiring a Member or its Affiliates to grant or withhold a non-exclusive license or sublicense of an individual Member's patents containing Necessary Claims to non-Members on such terms as the Member or its Affiliates may determine.

SECTION 5.6 TRANSFER OF NECESSARY CLAIMS

Any transfer by Member or its Affiliates to a third party (other than an Affiliate of such Member) of a patent having RAND-Licensed Necessary Claims shall be made expressly subject to: (i) the terms and conditions of this IPR Policy, (ii) the agreement to grant licenses by the Member to other Members and their Affiliates pursuant to Sections 5.2 and 5.3; and (iii) the non-assertion covenant contained in Section 5.4.

SECTION 5.7 SURVIVAL OF LICENSES AND OBLIGATION TO GRANT LICENSES

Notwithstanding the dissolution of the Corporation or a Member's termination or nonrenewal of its membership in the Corporation, (a) all licenses granted to or by such Member or its Affiliates pursuant to Section 5.2 prior to the date of such dissolution, termination or withdrawal shall survive and (b) a Member's agreement to grant a license as provided in Sections 5.2 and 5.4 and covenant not to sue pursuant to Section 5.4 shall remain in full force and effect for: (i) any Necessary Claim to a later adopted Final Specification, including such Member's Contribution thereto, that was in a Draft Specification that had completed the review of Section 5.1 without withdrawal notice by the Member under Section 5.1(b) where such Final Specification was adopted before the effective date of dissolution or before the effective date of a Member's termination or expiration of membership; and (ii) any Necessary Claims to a Final Specification adopted by the Corporation after the effective date of the Member's termination or expiration of membership solely to the extent such Necessary Claims (A) are necessary for the future

Specification to be backwards compatible with the prior Specifications, and (B) are used in a substantially similar manner and to a substantially similar extent with a substantially similar result as the same Necessary Claims were used in a prior Specification for which the Member is obligated to grant licenses. In no event is a withdrawn Member obligated to license any additional Necessary Claims under this Article 5 after the date of such Member's withdrawal other than as set forth in the immediately preceding sentence.

ARTICLE 6: OWNERSHIP OF INTELLECTUAL PROPERTY

Notwithstanding anything herein to the contrary, each Member shall retain ownership (including, but not limited to, the right to publish or distribute without any obligation of confidentiality) of any of its Contributions that such Member offers for use in the development of or for inclusion in a Specification, Marketing Materials or other output of a Work Group, as well as of such Member's implementations of the technologies described in a Specification. Where two or more Members jointly develop Contributions or intellectual property appurtenant thereto (such as copyrights or patent rights) as part of their work in the Corporation, such Members shall jointly own any such Contributions and intellectual property, without any obligation of accounting to each other or to the other Members, absent a written agreement between or among such Members to the contrary. To the extent to which a Specification, Marketing Material or other Work Group output constitutes a copyrightable work distinct from any Member's copyright interests in the Contributions included as part of such Specification, Marketing Material or other material from which they are derived, the copyright in such Specification, Marketing Material or other material of a Work Group shall be owned by the Corporation. To the extent that a Final Specification is not made publicly available without restriction by the Corporation, the Corporation hereby will be deemed automatically to have granted to each Member a non-exclusive, non-transferable, non-sublicenseable, worldwide, and royalty-free license under the Corporation's copyrights and trade secrets to reproduce and use the Final Specification solely for the purpose of making, having made, using, importing, offering to sell, leasing and selling and otherwise distributing Compliant Portions, subject to any terms, conditions, restrictions and limitations included in the Final Specification, and on terms and conditions consistent with those offered to non-Members for the same purpose.

ARTICLE 7: NO OTHER LICENSES

Except as explicitly set forth in Article 5 hereof, a Member is not required to grant any other Member or third party any rights or licenses of any kind or nature to any patents, copyrights, trademarks, trade secrets or other intellectual property rights of such Member.

ARTICLE 8: FOUNDATION DOCUMENTS

The Foundation Documents approved and accepted by the Alliance as Final Specifications, Final Informational Documents and Final Test materials are identified in Exhibit A.

EXHIBIT A: FOUNDATION DOCUMENTS

1.0 SDK Release 1.0 Specification