



IMS Global Learning Consortium Intellectual Property Rights Policy

1. IPR Generally

1.1 Purpose

IMS Global Learning Consortium, Inc. (the “Consortium”) has adopted this Intellectual Property Rights Policy (the “Policy”) and related Technical Advisory Board Policies and Procedures (the “Rules of Procedure”) in order to minimize the possibility of inadvertent infringement of the IPR of Members of IMS and third parties using or implementing any Consortium Specifications.

1.2 Applicability

All Members, all Member Representatives, and all third parties attending any technical process meeting are subject to this Policy and the Rules of Procedure.

2. Definitions

Term	Definition
Draft Specification	A technical Specification, or a revision-in-process of an existing Specification, that is the subject of a formally chartered process within the Consortium, and has not yet been approved for final release.
Implementers	Those Members and non-Members who desire to use or implement a Specification.
IPR	An abbreviation of “Intellectual Property Rights”, and including: claims made in patents and patent applications; copyrights; trademarks; and trade secrets.
Member	A registered member of the Consortium.
Necessarily Infringed	Unavoidable infringement by an implementation of any Required Element of a Specification, there being no technically reasonable alternative way to implement the Specification without resulting in such infringement.

Term	Definition
Necessary Claims	Those claims under patents and/or patent applications anywhere in the world that would be Necessarily Infringed by the implementation of the Required Elements of a Specification. Necessary Claims do not include (i) claims covering any enabling technologies that are not themselves expressly set forth in a Specification; (ii) claims covering reference implementations or implementation examples; or (iii) claims covering the implementation of other published specifications not developed by or for IMS, but referred to in the body of a Specification.
Participant	Any Member or, as permitted by the Rules of Procedure, non-Member, that participates in a Consortium Project Group after a point in time or process that is specified for such purposes in the Rules of Procedure.
Patent Call	See Section 3.4 below.
Project Group	A process group chartered to create or modify a Specification.
RAND	Reasonable and Non-discriminatory.
Related Party	Any entity that is directly or indirectly controlled by, under common control with, or that controls the subject party. For this purpose, “control” means beneficial ownership or the right to exercise more than 50% of the voting power for the entity.
Representative	Any individual that acts on behalf of a Member or other entity in connection with the technical process, or in the completion of any form to be delivered to the Consortium pursuant to the Policy or the Rules of Procedure.
Required Element	Any element of a Draft Specification or Specification identified as “Mandatory”, as defined in the Rules of Procedure, or “Alternative” (“Alternative” means that the Implementer is required to select one or more alternatives when implementing the Specification).
Specification	A technical specification, or any other work product of a Project Group, that requires formal adoption by the Consortium.
Submission	A submission or other contribution made to a Consortium Project Group in written form or electronic form, and accompanied by a Submission of Technology Form (Appendix A), for consideration for inclusion in a Specification. A Submission may occur, for example, as a result of an unsolicited offer to the Consortium of existing technology by a Member or third party, or in response to a request for contributions.
Submitters	Both Members, as well as any representative(s) of a Member, and any other person or entity making a Submission.

3. Necessary Claims

3.1 Member and Third Party Obligations Regarding Necessary Claims

In order to reduce the possibility of adopting a Specification that would, if used or implemented, infringe any Member or third party Necessary Claims, the Consortium will, in accordance with the Rules of Procedures, require all Participants and Submitters, whether or not the Submitter is a Participant, to conform to the following rules:

3.2 Licensing Elections at Time of Submission

(a) Any Submitter making a Submission must elect one of the following at the time of making a Submission:

- i) Royalty-free RAND License: Agree that if the Draft Specification in connection with which the Submission is made is finally approved by the Consortium, the Submitter and each of its Related Parties (collectively for this paragraph, “it”) will provide a license to all Necessary Claims owned by it or which it has the right to license, and inherent in its Submission on a perpetual, non-exclusive and worldwide basis, without compensation and otherwise on a RAND basis, to all Implementers, with such license permitting each Implementer to make, have made, use, reproduce, market, import, offer to sell and sell, and to otherwise distribute products that implement the Required Elements of such Specification; provided that such license need not extend to features of a product that do not constitute Required Elements; or
- ii) RAND License with Royalty: Agree to the same terms, but reserving the right to charge a royalty or other fee on RAND terms.

(b) Such election shall be made pursuant to a written declaration in the form of [Appendix A](#) to this Policy.

3.3 Licensing Elections at Contributing Member/Developers Network Draft

(a) Each Representative that is a Participant but not a Submitter must elect one of the following on a single occasion (except as provided in Section 3.3(b) below), which occasion shall be not later than the earlier of (x) the time that a Draft Specification is first posted as a CM/DN Draft, and (y) 60 days from the date of Submission.

- i) Royalty-free RAND License: Agree that if the Draft Specification is finally approved by the Consortium, it and each of its Related Parties (collectively for this paragraph, “it”) will provide a license to all Necessary Claims owned by it or which it has the right to license, on a perpetual, non-exclusive and worldwide basis, without compensation and otherwise on a RAND basis, to all Implementers, with such license permitting each Implementer to make, have made, use, reproduce, market, import, offer to sell and sell, and to otherwise distribute products that implement the Required Elements of such Specification; provided that such license need not extend to any Necessary Claims identified with particularity as specified in “iii” below, or to features of a product that do not implement Required Elements; or
- ii) RAND License with Royalty: Agree to the same terms, but reserving the right to charge a royalty or other fee on RAND terms; or
- iii) Withholding of License as to Identified Necessary Claims: Identify those Necessary Claims under the Draft Specification, in its then-current form, owned or licensed by it or any of its Related Parties (collectively for this paragraph, “it”), and the portion of the Draft Specification that would result in such infringement, and indicate that no guarantee of license rights is being made (or that such rights will in fact be denied in all cases) as to such Necessary Claims; provided that, with respect to any of such Necessary Claims that are not specifically identified for this purpose, the Member shall make available licenses in accordance with the licensing terms the Member has elected under “i” or “ii” above.

[**Note:** A Member may elect option “i” or “ii” as to some Necessary Claim(s), and this option as to other Necessary Claim(s)].

Provided, however, that (x) in the case of patent claims under non-public patent applications, the Member need not describe any such claims at a level of detail that would disclose any of its valuable trade secrets, and (y) an election form returned pursuant to this Section 3.3 by a Member that was a Submitter shall only apply to those portions of a Draft Specification that do not derive from such Member’s own Submission.

(b) Electronic notification of the date elections are required will be sent to each Participant no less than 60 days prior to the time that a Draft Specification is first posted as a CM/DN Draft. All elections by Participants shall be made pursuant to a written election in the form of [Appendix B](#) to this Policy. In the event that a decision is made to amend a technical element (e.g., not a schedule element) of a Draft Specification such that it no longer would fall within the original charter for such Draft Specification, and that decision is made after licensing elections have already been made, then the process described in (a) and (b) above shall be repeated when the revised Draft Specification is once again posted as a CM/DN Draft. In such event, the new elections shall relate only to those portions of the Draft Specification that have been revised since the previous elections were made, and the elections previously made shall remain binding as to the unrevised portions of the Draft Specification.

3.4 Patent Calls

Representatives participating in a Project Group are expected to inform the Project Group chair of any patent claims that they think may be Necessary Claims under a Draft Specification that is under development by that Project Group. Accordingly, at the beginning of every in-person meeting and teleconference of the Technical Advisory Board (TAB) or a Project Group, and at any other appropriate time in the course of electronic collaboration as may be provided for under the Rules of Procedure, a Patent Call shall be made. The scope of Patent Calls shall be limited to potential Necessary Claims personally known to an individual Representative, and not to the knowledge of that Representative's employer. The text to be employed in making Patent Calls is set forth in [Appendix C](#) to this Policy.

3.5 Sanctions for Failure to Respond or to Knowingly Withhold IPR

In the event that:

- i) any Representative of a Participant knowingly and willfully fails to respond to a Patent Call with respect to all Necessary Claims that are personally known to such Representative and are owned by such Representative or his/her employer, or
- ii) a Participant fails to timely return a signed and completed election form as required by [Section 3.3](#) above, or
- iii) a Participant (x) does return a signed and completed election form, but later asserts a Necessary Claim(s) against an implementer of the Specification in question, and (y) it can be shown that such Member knowingly and willfully withheld disclosure of such Necessary Claim(s) at the time of returning such election form;

then such Participant (or the Participant represented by the Representative referred to in i. above), as the case may be, shall be deemed to have elected to license all of its Necessary Claims under the Specification in question (in the case of ii. above), or the Necessary Claim(s) in question (in the case of i. or iii. above), with the terms to be as set forth in Section 3.3(a)i. above.

3.6 Document Notations

3.6.1 Notation when no Necessary Claims have been Identified

All Draft Specifications that are subject to comment and all Specifications shall include the following introductory language:

“Recipients of this document are requested to submit, with their comments, notification of any relevant patent claims or other intellectual property rights of which they may be aware that might be infringed by any implementation of the specification set forth in this document, and to provide supporting documentation.

“IMS takes no position regarding the validity or scope of any intellectual property or other rights that might be claimed to pertain to the implementation or use of the technology described in this document or the extent to which any license under such rights might or might not be available; neither does it represent that it has made any effort to identify any such rights. Information on IMS's procedures with respect to rights in IMS specifications can be found at the IMS Intellectual Property Rights web page:

http://www.imsglobal.org/ipr/imsipr_policyFinal.pdf.

“Copyright © IMS Global Learning Consortium 2008. All Rights Reserved.

“If you wish to distribute this document or use this document to implement a product or service, you must complete a valid license registration with IMS and receive an email from IMS granting the license. To register, follow the instructions on the IMS website: <http://www.imsglobal.org/specificationdownload.cfm>.

This document may be copied and furnished to others by Licensee organizations registered on the IMS website provided that the above copyright notice and this paragraph are included on all such copies. However, this document itself may not be modified in any way, such as by changing the details of the specification, removing the copyright notice or references to IMS, except as needed for the purpose of developing IMS specifications under the auspices of a chartered IMS work group.

“Use of this specification to develop products or services is governed by the license with IMS found on the IMS website: <http://www.imsglobal.org/...>”

“The limited permissions granted above are perpetual and will not be revoked by IMS or its successors or assigns.”

All Specifications shall additionally include the following introductory language:

“THIS SPECIFICATION IS BEING OFFERED WITHOUT ANY WARRANTY WHATSOEVER, AND IN PARTICULAR, ANY WARRANTY OF NONINFRINGEMENT IS EXPRESSLY DISCLAIMED. ANY USE OF THIS SPECIFICATION SHALL BE MADE ENTIRELY AT THE IMPLEMENTER'S OWN RISK, AND NEITHER THE CONSORTIUM, 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 USE OF THIS SPECIFICATION.”

3.6.2 Notation when Necessary Claim(s) are Identified

(a) When Necessary Claim(s) have been identified for Draft Specifications, or thereafter with respect to already published Specifications, a notice substantially as follows shall also be included in the introductory language:

“The Consortium draws attention to the fact that it is claimed that compliance with this specification may involve the use of a patent concerning [Subject Matter] given in [Subclause]. The Consortium takes no position concerning the evidence, validity or scope of such patent rights.

“The patent holder has assured the Consortium that it is willing to license patent rights it owns or controls which would necessarily be infringed by any implementation of this specification to those licensees (Members and non-Members alike) desiring to implement this specification. The statement of the patent holder to such effect has been filed with the Consortium. Information may be obtained from:

[Name of Holder of Right]

[Address]

“Attention is also drawn to the possibility that some of the elements of this specification may be the subject of patent rights other than those identified above. The Consortium shall not be responsible for identifying any or all such patent rights.”

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

“The holder of patent rights has refused a request by the Consortium 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]”

3.7 Patent Searches

In no event shall the Consortium, or any Representative, Participant or non-Participant Member be obligated to conduct any patent searches regarding any Necessary Claims or other IPR that may be infringed by any implementation of a Draft Specification or Specification.

3.8 Patent Claims Revealed After Publication

In the event that a Necessary Claim is first revealed by a Member or third party following adoption and publication of a Specification, and such Necessary Claim is not already subject to a licensing or non-assertion obligation under [Section 3.2](#), [Section 3.3](#), or [Section 3.5](#) above, such holder will be asked to license the Necessary Claim in the manner outlined in [Section 3.2](#) or [Section 3.3](#) above. If such request is refused, the Specification in question shall be referred back to the Technical Advisory Board for further consideration, as appropriate.

4. Copyrights

4.1 Copyright in Specifications

The copyright for all Specifications and other work product of the Consortium shall belong to the Consortium, and may bear a copyright notice in the Consortium's name.

4.2 Contributions of Copyrighted Materials

Each Submitter who contributes copyrighted materials to the Consortium shall retain copyright ownership of its original work, while at the same time granting the Consortium a non-exclusive, irrevocable, worldwide, perpetual, royalty-free license under the Submitter's copyrights in its Submission to reproduce, distribute, publish, display, perform, and create derivative works of the Submission based on that original work for the purpose of developing a Draft Specification or Specification under the Consortium's own copyright.

5. Trade Secrets

Information provided by Participants and other Members will not be treated as confidential by the Consortium, nor will any Member be required to treat the same as confidential. Consequently, Participants and other Members will not be expected to reveal trade secret information in the course of participation in any Consortium activity, nor will they be asked by the Consortium to sign non-disclosure agreements. The Consortium will not be held responsible for the disclosure of any Member's or non-Member's trade secrets, regardless of the circumstances.

6. Trademarks

6.1 Consortium Trademarks

Trademarks created by the Consortium, registered or otherwise, are the property of the Consortium. Use of Consortium trademarks shall be governed by such policies, procedures and guidelines as may be established and approved by the Consortium from time to time, and applicable law.

6.2 Non-Consortium Trademarks

The Consortium's use of third-party trademarks, registered or otherwise, shall be governed by such policies, procedures and guidelines as may be established and approved by the owners of such trademarks, and applicable law.

Appendix A

IMS GLOBAL LEARNING CONSORTIUM, INC SUBMISSION OF TECHNOLOGY FORM

Note: All blanks must be completed in order for this Submission to be given consideration. This submission is subject to the Intellectual Property Rights Policy (the “IPR Policy”) of IMS Global Learning Consortium, Inc. (the “Consortium”), and the Rules of Procedure of the Technical Advisory Board of the Consortium (collectively, both such documents being referred to below as the “IPR Policies and Procedures”). *All capitalized terms used in this form shall have the meanings given to them in Exhibit A attached to this form.*

Name of Member Submitter:	
Name of Representative Completing this Form on Behalf of Submitter:	
Mailing Address of Representative:	
Email Address of Representative:	
Draft Specification and RFP (if any) to which this Submission relates:	

A. The Representative hereby represents the following on behalf of him/herself and the Submitter, as the context requires:

- 1) The Representative is authorized to make the Submission attached hereto as Exhibit B on behalf of the Submitter, and to make the following representations and warranties.
- 2) The Submitter has reviewed the IPR Policies and Procedures and agrees that its Submission is being made in full compliance with the same.
- 3) The Submitter hereby irrevocably agrees that if its Submission is incorporated, either in whole or in part, into the Draft Specification referenced above and the same becomes a formally adopted Specification, that on request it and its Related Parties will license all Necessary Claims owned by it on the following terms (*Note: A Submitter **must** elect one of the following*):

_____ Royalty-free RAND License. The Submitter and each of its Related Parties (collectively for this paragraph, “it”) will license all Necessary Claims owned by it or which it has the right to license that are inherent in its Submission on a perpetual, non-exclusive and worldwide basis, without compensation and otherwise on a RAND basis, to all Implementers, with such license permitting each Implementer to make, have made, use, reproduce, market, import, offer to sell and sell, and to otherwise distribute products that implement the Required Elements of such Specification; provided that such license need not extend to features of a product that do not constitute Required Elements; *or*

_____ RAND License with Royalty: The Submitter and each of its Related Parties agrees to the same terms, except with regard to compensation, and reserves the right to charge a royalty or other fee on RAND terms.

- 4) The Submitter hereby (a) grants to the Consortium a non-exclusive, irrevocable, worldwide, perpetual, royalty-free license under the Submitter's copyrights in its Submission to reproduce, distribute, publish, display, perform, and create derivative works of the Submission based on that original work for the purpose of developing a Draft Specification or Specification, and (b) agrees that in the event that the Submission is accepted, in whole or in part, that the Consortium will own the copyright in the resulting Specification and all rights therein, including the rights of distribution, subject only to the continuing copyright ownership rights of the Submitter in the Submission. This agreement shall not in any way deprive the Submitter of any patent claims or other IPR relating to the technology to which its Submission relates.

B. The Consortium, in accepting this Submission, acknowledges the following:

EXCEPT AS SPECIFICALLY PROVIDED FOR ABOVE, THIS SUBMISSION IS BEING OFFERED WITHOUT ANY WARRANTY WHATSOEVER, AND IN PARTICULAR, ANY WARRANTY OF NON-INFRINGEMENT IS EXPRESSLY DISCLAIMED, EXCEPT TO THE EXTENT OF KNOWING FALSITY IN ANY STATEMENT MADE ABOVE. ANY IMPLEMENTATION OF ANY SPECIFICATION INCORPORATING THIS SUBMISSION IN WHOLE OR IN PART SHALL BE MADE ENTIRELY AT THE IMPLEMENTER'S OWN RISK, AND THE SUBMITTER SHALL HAVE NO LIABILITY WHATSOEVER TO ANY IMPLEMENTER OR THIRD PARTY FOR ANY DAMAGES OF ANY NATURE WHATSOEVER DIRECTLY OR INDIRECTLY ARISING FROM SUCH IMPLEMENTATION, EXCEPT AS A RESULT OF ANY KNOWING FALSITY IN ANY STATEMENT MADE ABOVE.

This submission has been made on _____, 200_.

Name of Submitter

By:

Signature of Representative

Name:

Exhibit Index:

- A: Defined Terms
B: Submission

Exhibit A**DEFINED TERMS**

Term	Definition
Draft Specification	A technical specification, or a revision-in-process of an existing Specification, that is the subject of a formally chartered process within the Consortium, and has not yet been approved for final release.
Implementers	Those Members and non-Members who desire to use or implement a Specification.
IPR	An abbreviation of “Intellectual Property Rights”, and including: claims made in patents and patent applications; copyrights; trademarks; and trade secrets.
Member	A registered member of the Consortium.
Necessarily Infringed	Unavoidable infringement by an implementation of any Required Element of a Specification, there being no technically reasonable alternative way to implement the Specification without resulting in such infringement.
Necessary Claims	Those claims under patents and/or patent applications anywhere in the world that would be Necessarily Infringed by the implementation of the Required Elements of a Specification. Necessary Claims do not include (i) claims covering any enabling technologies that are not themselves expressly set forth in a Specification; (ii) claims covering reference implementations or implementation examples; or (iii) claims covering the implementation of other published specifications not developed by or for IMS, but referred to in the body of a Specification.
Participant	Any Member or, as permitted by the Rules of Procedure, non-Member, that participates in a Consortium Project Group after a point in time or process that is specified for such purposes in the Rules of Procedure.
Patent Call	See Section 3.4 of the IPR Policy.
Project Group	A process group chartered to create or modify a Specification.
RAND	Reasonable and Non-discriminatory.
Related Party	Any entity that is directly or indirectly controlled by, under common control with, or that controls the subject party. For this purpose, “control” means beneficial ownership or the right to exercise more than 50% of the voting power for the entity.
Representative	Any individual that acts on behalf of a Member or other entity in connection with the technical process, or in the completion of any form to be delivered to the Consortium pursuant to the Policy or the Rules of Procedure.
Required Element	Any element of a Draft Specification or Specification identified as “Mandatory”, as defined in the Rules of Procedure, or “Alternative” (“Alternative” means that the Implementer is required to select one or more alternatives when implementing the Specification).
Specification	A technical specification, or any other work product of a Project Group, that requires formal adoption by the Consortium.
Submission	A submission or other contribution made to a Consortium Project Group in written form or electronic form, and accompanied by a Submission of Technology Form (Appendix A), for consideration for inclusion in a Specification. A Submission may occur, for example, as a result of an unsolicited offer to the Consortium of existing technology by a Member or third party, or in response to a request for contributions.
Submitters	Both Members, as well as any representative(s) of a Member, and any other person or entity making a Submission.

Appendix B

IMS GLOBAL LEARNING CONSORTIUM, INC

INTELLECTUAL PROPERTY RIGHTS ELECTION FORM

Note: All blanks must be completed in order for this Election Form to be given consideration. This Election Form is subject to the Intellectual Property Rights Policy (the “IPR Policy”) of IMS Global Learning Consortium, Inc. (the “Consortium”), and the Rules of Procedure of the Technical Advisory Board of the Consortium (collectively, both such documents being referred to below as the “IPR Policies and Procedures”).

All capitalized terms used in this Election Form shall have the meanings given to them in Exhibit A attached to this Election Form.

Name of Member:	
Name of Representative Completing this Form on Behalf of Member:	
Mailing Address of Representative:	
Email Address of Representative:	
Draft Specification to which this Election Form relates:	

The Representative hereby represents the following on behalf of him/herself and the Member or Participant, as the context requires:

- 1) The Representative is authorized to complete and submit this Election Form on behalf of the Participant, and to make the following representations and warranties.
- 2) The Representative and the Participant have each reviewed the IPR Policies and Procedures, and agree that this Election Form is being completed and submitted in full compliance with the same.
- 3) The Participant hereby irrevocably agrees that if the Draft Specification referred to above becomes a formally adopted Specification (**Note: all Representatives *must* elect one of the following**):

_____ Royalty-free RAND License. On request it and each of its Related Parties (collectively for this paragraph, “it”) will license all Necessary Claims owned by it or which it has the right to license that are inherent in its Submission on a perpetual, non-exclusive and worldwide basis, without compensation and otherwise on a RAND basis, to all Implementers, with such license permitting each Implementer to make, have made, use, reproduce, market, import, offer to sell and sell, and to otherwise distribute products that implement the Required Elements of such Specification; provided that such license need not extend to features of a product that do not constitute implement Required Elements; *or*

_____ RAND License with Royalty: The Submitter and each of its Related Parties agrees to the same terms, except with regard to compensation, and reserves the right to charge a royalty or other fee on RAND terms; *or*

_____ Withholding of License as to Identified Necessary Claims: It identifies on **Exhibit B** certain Necessary Claim(s) owned or licensed by it or any of its Related Parties under the Draft Specification, in its current form, and the portion of the Draft Specification that would Necessarily Infringe such Necessary Claims, and hereby notifies the Consortium that no guarantee of license rights is being made (or that such rights will in fact be denied in all cases) as to such Necessary Claims).

(Note: You may elect option i. or ii. as to some Necessary Claim(s), and this option as to other Necessary Claim(s)).

Provided, however, that in the case of disclosures required under the third alternative above of patent claims under non-public patent applications, it has only described such claims at a level of detail that will not disclose any of its valuable trade secrets.

This Election Form has been submitted on _____, 200_.

Name of Participant

By:

Signature of Representative

Name:

Exhibit Index:

A: Defined Terms

B: Withheld IPR

Exhibit A**DEFINED TERMS**

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Submitters	Both Members, as well as any representative(s) of a Member, and any other person or entity making a Submission.

Appendix C

PATENT CALL TEXT

Please be aware that this meeting is being held under the Intellectual Property Rights policy adopted by IMS Global Learning Consortium, Inc. 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 _____ section of the IMS 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 that would be likely to be infringed by an implementation of the specification or other work product which is the subject of this meeting. 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 that turns out to be inaccurate.

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