

CA/BROWSER FORUM
SUMMARY OF PROPOSAL AND OPEN QUESTIONS
GOVERNANCE CHANGE WORKING GROUP
October 17, 2016

1. Chartering Working Groups; Powers.

Amend Bylaws to create new Working Groups (WGs) where all substantive work would occur. Official charter for each WG would be approved by CABF members and included in an Appendix to the Bylaws. Permitted participants for each WG would be defined in the WG's charter; such participants would typically include CAs and applications/others with "skin in the game" (e.g., by using or consuming the product that is the subject of the WG). Interested Parties could also have limited participation in a WG just as today provided that they sign the IPR agreement. WGs would have the authority to draft and finally adopt all guidelines within the WG scope by WG ballot, and WG guidelines would not have to be re-adopted or approved at the Forum level. Only those participating in a WG will make IP disclosures and have IP obligations with respect to such WG.

Potential initial WGs:

- a. Web Working Group (basically the work of the Forum today – TLS certificates on the Web)
- b. Code Signing Working Group
- c. S/MIME Working Group

Open Questions:

- Should we add a Client Working Group - TLS client certificates (per Patrick Tronnier)? A Telephone Certificate WG?
- Should we require a WG to show there are a minimum number of applicants prepared to join and participate before the charter is approved and the WG can begin its work?
- Should the Forum set any minimum requirements regarding the content of WG guidelines (for quality control, so the WG doesn't exceed its charter, etc.)? Do we need a template for a WG charter? [Andrew and Virginia to draft]
- Should WGs be able to do some work through "Subcommittees" to prepare proposals for consideration by the full WG (as we do today with working groups that prepare proposals for the Forum)? Probably yes, but only WG members may participate on a Subcommittee because of IPR implications.
- If the number of Interested Parties becomes too large for manageable meetings and teleconferences, consider changing participation privileges if necessary.
- Should the Forum create some minimum requirements for all WGs? [Yes – they absolutely must follow the antitrust and other laws! These are not optional! Is this the same as the 3rd bullet above?]
- Should WGs be required to comply with applicable portions of the BRs? How can we tell in advance what would be relevant/applicable (e.g., a particular WG may need exceptions – can it create exceptions to the BRs in its own documents)?

2. Ongoing Role of the Forum

The Forum itself (the “parent” organization, which is where adoption of all final guidelines occurs today) would take on a smaller role, limiting its work to the following:

- a. Amending the Bylaws (including amendments to create new Working Groups as needed)
- b. Resolving any conflicts among the Working Groups
- c. Dissolving Working Groups
- d. Adoption and maintenance of a common IPR policy, and maintaining records of participation, IP exclusion notices, etc. for the Working Groups
- e. Handling logistics of face to face meetings
- f. Implementing Working Group membership rules and deciding on acceptance of new members
- g. Election of officers

However, the Forum itself would not adopt any guidelines or requirements. All members at the Working Group level (CAs, browsers, and other members) would automatically be members at the Forum level as well.

Open Questions:

- Should the Chair of Forum automatically be the Chair of the Web Working Group (to have enough to do)?
- Should the Forum also have the power to create Subcommittees to study certain issues? Probably yes, so long as the work of a Subcommittee is purely administrative and creates no IP, does not involve any IPR issues. [this is why this work needs to be under the IPR policy. You never know in advance if it will be substantive or not. Unless subcommittees only involve people typing up schedules, it will be very difficult to keep these purely administrative.]

3. Voting Rules

Voting rules would be uniform at the Working Group and Forum level, and would be essentially the same as today. At the Working Group level, WG guidelines would be adopted upon approval of 2/3 of CA members and a majority of non-CA members (browsers and other members). At the Forum level, most actions such as amendment of the Bylaws (including creation of new Working Groups) would require approval of 2/3 of CA members and a majority of non-CA members (browsers and other members) in order to pass.

Open Questions:

- Should browsers retain their separate majority veto power in votes at the Forum level?
- What if a WG has multiple CA members, but only one application member? Allowing the single application member to veto a proposal may not work well. (Counter: if the application member doesn't like the proposal, it probably won't be used.)
- What if CAs alone want to create a WG on a subject to “seed” the industry with guidelines that may later attract applications and users – would this be possible? What if CAs and others (browsers, etc.) want to create a WG where everyone votes as a single class? (Voting rights will need to be defined in the WG's initial charter.)

- We need to define “affiliates” better in the Bylaws to clarify when two or more related companies can related companies can vote. One possibility is to use definition in IPR Agreement:

“**Affiliate**” means an entity that directly or indirectly controls, is controlled by, or is under common control with, a Participant. Control for the purposes of this Agreement shall mean direct or indirect beneficial ownership of more than fifty percent of the voting stock, or decision-making authority in the event that there is no voting stock, in an entity. The CAB Forum Board of Directors may, in its discretion, grant exclusions for related companies of CAB Forum Members which would technically fall within the “Affiliate” definition in situations where it can be shown that there is no intent to circumvent the licensing obligations of the IPR Agreement and the IPR Policy Section 5.

- What about other joint activities by two members, such as funding of one by the other, use of joint code bases, sharing of staff or offices, board seats, etc. Should this be considered “Affiliate” status so the two members only have one vote?
- If two companies are Affiliates and they are in different voting categories (e.g., CA and browser), should they be required to choose one category for voting in a given WG? Can they change this choice from time to time? Should they be restricted to changes only once every x months? Can they have different voting categories in different WGs (e.g., vote as a CA in one WG, but vote as a browser in a different WG)?

4. Application of IPR Policy

IPR Policy would be uniform across all WGs. However, IPR Policy for work of each WG would apply only to participants of that WG, and not to participants in other WGs or to Members of the Forum generally. For certainty as to which parties are covered by the IPR Policy of a WG, WG members can only participate (by meeting, teleconference, or email) if they officially sign up as members or Interested Parties for a given working group. Careful membership records must be maintained for each WG, and it is the responsibility of the [Chair?] of the WG to keep such records.

Open Issues/Questions:

- We will need to amend our current IPR Policy and Bylaws to conform to these changes. **[Yes, this will require another ballot, but with no exclusion period.]**
- With the WG participation model, an issue arises because there would no longer be broad, across-the-board CAB Forum patent licenses. This would enable some CABF members who are participating in different WGs to sue each other for patent infringement. This type of conduct is not condoned by standards organizations in general. To address this issue, we could amend the IPR Policy so that any CABF member who asserts IP rights against any other CABF member loses all “royalty-free licenses” otherwise available to the member from other members as a disincentive to sue. Possible language from Virginia:

“If a CAB Forum Participant initiates litigation (the “Litigating Participant”) against any other CAB Forum Participant asserting a patent infringement claim based on an Essential Claim (excluding counter-claims, and cross-claims) alleging that an implementation of a Final Guideline or a Final Maintenance Guideline directly or indirectly infringes any Essential Claim, then the licenses granted to the Litigating Participant by any and all CAB Forum

Participants for all Essential Claims shall immediately terminate. In addition, the Litigating Participant's membership in the CAB Forum shall automatically and immediately terminate without notice upon initiating such litigation. All licenses to Essential Claims granted by the Litigating Participant prior to its termination from CAB Forum shall remain in full force and effect."

- Should a WG member who sues another CAB Forum member over Essential Claims as defined in the IPR Policy be excluded as a member? [this is addressed in the provision above]
- A WG member could resign from the WG at a critical moment to avoid having to declare IP under the IPR agreement, then later seek to rejoin. Should there be a minimum waiting period for rejoining? [Yes. Dave Singer said it's 6 months for W3C.]
- Today our royalty free license goes to anyone in the world – should we limit it so it only goes to other members of the WG? (That would encourage anyone with IP in an area to join the WG and participate, creating a greater pool of royalty free IP for everyone in the group.) [No. We want the license to be open so people can use it and it will help keep CAB Forum relevant.]
- Should we create an online click-through agreement for Interested Parties (and Members?) to agree to the IPR Agreement? Or required signed pdfs? [Only have an online click agreement if you have a foolproof way to track who clicked to accept and when. Otherwise it's as useless as no agreement.]

5. Communications from Others

We discussed whether to create a new channel for input by the public (those who do not want to sign the IPR agreement and become Interested Parties), such as a new list-serv with a click-through agreement that all IP included in a posting is being contributed to the public domain, similar to the W3C model. However, at this point the consensus was that a new channel is not needed, and those who want to participate should sign the IPR agreement and become Interested Parties. [yes I agree]

Open Questions:

- Should we create an open, monitored public list? [with a click IPR agreement?]