



GS1 US IP Policy Business Overview

This overview was developed to help business and lay persons gain a basic understanding of the GS1 US IP Policy. It uses high-level descriptive language instead of precise legal terminology in order to best serve that purpose. This document is for informational purposes only, and does not replace or modify any provision in the GS1 US IP Policy.

Introduction

The objective of GS1 US is to develop voluntary, royalty-free standards and guidelines for use by industry for the betterment of all. In order to achieve this objective, there is a need for safeguards that protect the standards and guideline development processes from opportunistic behavior. The primary concern is a workgroup participant failing to disclose known intellectual property (IP) and then surreptitiously influencing the development of a standard or guideline to incorporate that IP *so that they can later attempt to collect a royalty from every user of the standard/guideline*. Such behavior undermines the objective of GS1 US, as well as the integrity of the standards and guideline development processes to which workgroup participants generously dedicate their time to better their industries.

To avoid such behavior, GS1 US instituted an IP Policy for workgroup efforts in 2013. The Policy uses disclosure and notice requirements to promote fair play and to eliminate the use of silence as a mechanism for IP gamesmanship in workgroups.

General Approach of the GS1 US IP Policy

GS1 US depends upon workgroup participants to disclose and provide notice of any intellectual property rights when developing standards and guidelines. To encourage all participants to be forthright in that effort, the GS1 US IP Policy creates a workgroup environment where the default mechanism is that any IP of a workgroup member in the final standard/guideline is licensed royalty-free *unless the workgroup member disclosed the presence of their IP in the guideline and excluded it from the royalty-free licensing default in a timely manner during the standards development effort*. This protects the workgroup from gamesmanship while providing an opt-out for companies with IP they cannot grant on a royalty-free basis. Moreover, it gives the workgroup the

opportunity to design around the claimed IP and/or consider any alternative royalty the workgroup member may offer for that IP during the development process and before the standard/guideline is finalized.

Under this approach, workgroup members still maintain their rights to assert their IP. The Policy does not and does not intend to acquire any organization's intellectual property. Rather, it formalizes and reinforces the need for workgroup participants to disclose and provide notice about their IP when developing standards and guidelines. It eliminates the ability to use silence for IP gamesmanship, promotes openness, and provides a process for members to exclude their IP from the royalty-free arrangement.

Overview of Key Provisions

1. Workgroup member IP that would be infringed by implementing a workgroup standard and/or guideline is by default **licensed royalty-free** to any party that implements the standard/guideline.
 - Creates a “default royalty-free playing field” for workgroups.
 - Relates only to IP that would be infringed *through an implementation of guidelines approved by the workgroup*—does not provide a blanket license to your company's entire IP portfolio.
2. Workgroup members must **promptly disclose*** any IP it claims would be infringed by implementing a standard and/or guideline being developed by the workgroup.
 - The earlier the workgroup is made aware of potential IP rights that could hamper widespread adoption and use of a guideline, the easier it will be for GS1 US and the workgroup to attempt to design around any potentially unavailable IP.

3. Workgroup members must provide **formal notice*** of any IP it wants to exclude from the default royalty-free licensing arrangement.

- If desired, the workgroup participant can offer a “reasonable” royalty it is willing to charge users of the standard/guideline if the IP is included.
- Alerts GS1 US and the workgroup that certain IP will not be available on a royalty-free basis, and enables them to decide if they want to accept the alternative royalty (if offered), or design around the unavailable rights to ensure that any approved strategies are royalty free.

* *The GS1 US IP Policy provides the details about the content and timing of the disclosure and notice, and GS1 US created a form document for each (available on the website) to support members in preparing these materials.*

Benefits

The GS1 US IP Policy helps to assure that those who participate in the development of standards and guidelines are not surreptitiously influencing the development process in order to improperly profit from the standard or guideline. The GS1 US IP Policy is intended to protect workgroup participants and users of GS1 US standards and guidelines.

Signing the GS1 US IP Policy is a condition of participation in chartered GS1 US workgroups. It enables workgroup members to work together to develop standards and guidelines in a non-opportunistic environment, and fosters open communication among participants. Companies that sign the Policy are able to influence the shape and direction of the standard. They help determine what is included in the guidelines, and enjoy early access to the guidelines as they are being developed.

Workgroups to Which the IP Policy Applies

The GS1 US IP Policy applies to chartered GS1 US workgroups in which standards and guidelines are developed—in other words, workgroups where specific, chartered deliverables are *identified*. Not all “workgroups” fall under the GS1 US IP Policy. For example, industry initiatives often have workgroups where industry challenges or opportunities are identified and discussed. Such a group may identify the need for a solution as a need to be incorporated into a strategic plan. While the group identified the needed deliverable, they did not develop it. Therefore, this type of effort would not be subject to the GS1 US IP Policy.

To view the GS1 US IP Policy and supporting documents visit our website, www.gs1us.org/ip

What Do I Need to Do to Participate?

Members of a GS1 US Industry Initiative can expect to receive the GS1 US IP Policy from our legal counsel through Echo Sign (an electronic signature agreement). The IP Policy defines the requirements of any organization that chooses to participate in a chartered work effort with a specific deliverable. An organization signs this agreement once to acknowledge that it understands the requirements of the IP Policy and their responsibilities if/when participating in a chartered workgroup.

Once a workgroup to which the IP Policy applies is chartered, those that sign up to participate in the workgroup can expect to receive an IP Policy Opt-In Agreement from our legal counsel through Echo Sign. With this agreement, the organization states that they are participating in this specific workgroup and acknowledges that the requirements of the IP Policy apply to them *for this specific work effort and the specific deliverable being developed*. (In fact, the charter is included in the “IP Opt-In Agreement” to clearly define the specific context in which the Policy is being invoked.) An organization signs one of these agreements for each chartered workgroup in which they want to be a member.

Thus, the IP Policy is only applicable when triggered by an “IP Opt-In Agreement” for a specific workgroup, and only applies to the specific deliverable being developed in that work effort. Both the IP Policy and the “IP Opt-In Agreement” require the signature of the appropriate person within an organization.*

* *NOTE: There is a “3 meeting rule” whereby a participant may take part in three meetings of a work effort governed by the IP Policy without the “IP Opt-In Agreement” signed. After the third meeting, if the “IP Opt-In Agreement” is not completed, the participant must be dropped from the roster.*

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