

INTELLECTUAL PROPERTY POLICY OF THE OPEN MUSIC INITIATIVE, INC.

1 Introduction and General

The Open Music Initiative (hereinafter referred to as “**OMI**”) is a Massachusetts nonprofit corporation chartered with the principal goal of coordinating and advancing innovation and interoperability across the media industry ecosystem in order to foster the development of new applications and opportunities for music usage. This OMI Intellectual Property Policy (the “**IP Policy**”) governs treatment of intellectual property in all Activities, and applies to all Participants. OMI is a membership based organization that receives input from its Members and other Participants (each as defined below).

2 Definitions

“**Activity**” means any meeting governed by the Bylaws and any communications, regardless of form, related to such meeting.

“**Affiliate**” is as defined in the Bylaws.

“**Contribution(s)**” means any written, electronic, or verbal information submitted by Participants to, or as part of, any Activities, except to the extent the submitting Participant disclaims in writing on the form provided at **Appendix D** at the time such information is submitted to, or as part of any Activity, that such listed invention, improvement, or other intellectual property is not intended to be a Contribution.

“**Covered Product**” the specific portions of hardware, software, services, or combinations thereof that implement and comply with all Normative Portions of a draft or approved Formal Corporation Policy.

“**Copyright Interest**” means an ownership interest in a copyright or copyrightable subject matter in any jurisdiction in the world, no matter if owned by a Participant or a third party.

“**Copyright License Grant**” is defined in **Appendix A**.

“**Essential Claims**” means those claims in any patent or patent application in any jurisdiction in the world that would necessarily be infringed by an implementation of a draft or approved Formal Corporation Policy. A claim is necessarily infringed only when a non-infringing alternative for implementing the Normative Portions of a draft or approved Formal Corporation Policy exists. Existence of a non-infringing alternative shall be judged based on the state of the art at the time the Formal Corporation Policy is approved.

“**Formal Corporation Policy**” as defined in the Bylaws.

“Limited Non-Assertion Covenant” is defined in **Appendix B**.

“Materials” has the meaning given in Section 7.

“Member” is as defined in the Bylaws.

“Normative Portion” means the portion of a draft or approved Formal Corporation Policy that must be implemented to comply with such policy. If such policy defines optional parts, Normative Portions include those portions of the optional part that must be implemented if the implementation is to comply with such optional part.

“Participant” means any Member, Affiliate, or non-member submitting Contributions.

“Relevant Patent” means a patent or patent application in any jurisdiction in the world, no matter if owned by a Participant or a third party, which may contain an Essential Claim.

“Secretary” means the Secretary of the Corporation as set forth in the Bylaws.

3 Contribution Non-confidentiality

All Contributions shall be submitted by Participants on a non-confidential basis, notwithstanding any markings or representation to the contrary. Neither OMI nor any Participant shall have any obligation to treat any Contribution as confidential.

4 Copyrights

4.1 Disclosure and Acknowledgment

At the time a Participant submits a Contribution, the Participant making a Contribution must identify each holder of a Copyright Interest in such Contribution, if any. The absence of identifying a Copyright Interest means the submitting Participant has no knowledge of copyright holders.

Any Participant who becomes aware of an unidentified Copyright Interest in a Contribution submitted by itself or any other Participant shall notify the Secretary of that Copyright Interest. The Participant shall give such notice within thirty (30) days of the Participant becoming aware of the unidentified Copyright Interest.

All Participants further acknowledge that, to the best of their personal knowledge, all Contributions are free of encumbrance as it relates to the intellectual property rights of others.

4.2 License

To the extent that a Participant holds a Copyright Interest in its own Contribution, such Participant agrees to grant in the form of Copyright License Grant provided as **Appendix A** and hereby does grant to OMI and its Members a perpetual, irrevocable, non-exclusive, royalty-free, worldwide copyright license, with the right to directly and indirectly sublicense:

- a. to copy, publish, and distribute the Contribution in any way;
- b. to prepare derivative works that are based on or incorporate all or part of the Contribution;
- c. to incorporate any Contribution regardless of media or form, and any subsequent modifications thereof, in the Formal Corporation Policy;
- d. to permit OMI to own and register copyrights in OMI's name of the Formal Corporation Policy, even though it may include portions of said Contributions; and
- e. to permit others, at OMI's discretion, to reproduce in whole or in part the resulting Formal Corporation Policy.

for the purpose of developing, promoting, and implementing the Formal Corporation Policy.

To the extent that a Contribution is subject to a Copyright Interest of a party or parties other than the submitting Participant, the submitting Participant shall provide to the Secretary a Copyright License Grant from each such copyright owner whose permission would be required to permit OMI and its Members to exercise the rights required under the Formal Corporation Policy and this IP Policy.

4.3 Treatment of Unlicensed Contributions

Any Contribution lacking the required Copyright License Grant(s) shall not be considered in the deliberations of Participants or included in a Formal Corporation Policy. The Secretary shall delete the contents of such Contribution from all records of OMI, but shall retain sufficient information to identify the Contribution, its submitting Participant, the date of content deletion, and to identify the cause of deletion as "missing Copyright License Grant".

4.4 Previously Copyrighted Materials

Any previously copyrighted material proposed to be included in the Formal Corporation Policy should be referenced by name and source including any known licensing requirements. If such material is deemed sufficiently important to merit insertion, the appropriate Steering Committee or Working Group may grant authorization for its use. A note citing the copyright and authorization for use shall be included in the Formal Corporation Policy.

5 Patents

5.1 Disclosure

Each Participant shall disclose, by giving notice to the Secretary, the existence of all Relevant Patents that have not yet been so disclosed, provided such disclosure is not prohibited by any confidentiality obligation binding upon the Participant. Such notice shall be given within thirty (30) days of becoming aware of the undisclosed Relevant Patent.

Each disclosure shall contain:

- a. The patent or patent application publication number, or the existence of an unpublished patent application, and the associated country; and,
- b. Identification of the relevant portions of the Formal Corporation Policy.

If the disclosing Participant holds an interest in a Relevant Patent, that Participant shall include with its disclosure a Limited Non-Assertion Covenant for any Essential Claims contained in the Relevant Patent.

Participant's knowledge of any Essential Claim that may be applicable to the Formal Corporation Policy is not contingent on having conducted a patent search nor is a patent search a requirement for contributions by a Participant.

5.2 Non-assertion

No draft Formal Corporation Policy shall be approved until each Participant holding an Essential Claim delivers to the Secretary a Limited Non-Assertion Covenant.

During consideration for approval of a draft Formal Corporation Policy, the Secretary shall publicize and publish the draft policy together with a request for additional disclosures by Participants and third parties of Relevant Patents. Such additional disclosures must be submitted within thirty (30) days of the request.

6 Use of Trademarks and Service Marks

6.1 Use of OMI Trademarks and Service Marks

A Participant may use an OMI trademark or service mark only in compliance with OMI's license and usage guidelines.¹

6.2 Use of Other Trademarks and Service Marks

The use of trademarks or service marks, other than those registered by OMI, in the Formal Corporation Policy is discouraged; however, when used the first occurrence of the trademark or service mark will be indicated by the appropriate symbol and the name of the trademark owner will be annotated in the front matter of the Formal Corporation Policy.

7 Intellectual Property Rights in Formal Corporation Policy and Materials

Intellectual property rights shall be extended to the Formal Corporation Policy and drafts, materials, and documentation of the Formal Corporation Policy ("**Materials**") once the Formal Corporation Policy has passed ballot. The Materials shall include those drafts of the Formal Corporation Policy representing the Steering Committee or Working Group's effort to prepare it for final review and subsequent request for publication.

The Formal Corporation Policy and Materials may, for example, be protected as works of copyrightable authorship under applicable US and international copyright principles. Consistent with these principles, OMI asserts and holds domestic and international copyrights to the Formal Corporation Policy and Materials. Recognizing that the Formal Corporation Policy and Materials are the work product of the Participants, and that OMI is the collective representative of all of the Members' interests, these copyrights are asserted and held by OMI in its capacity as the representative of its total membership. All Members have and will continue to possess the usage rights to the Formal Corporation Policy and Materials as authorized by OMI's agreements with such Members. To achieve the objectives of 1) assuring the integrity of the Formal Corporation Policy and Materials, and 2) guaranteeing that users may secure from a reliable source the Formal Corporation Policy and Materials, OMI will enforce the copyrights it holds in the Formal Corporation Policy and Materials.

8 Licensing of OMI Copyrighted Materials and Content

To the extent the Formal Corporation Policy and Materials consist of software, OMI will license such software under the MIT License, attached hereto as **Appendix C**. If the relevant part of the Formal Corporation Policy or Materials for which a license is

¹ **Note to Draft:** License and Usage guidelines to be developed by the OMI Board with input from the OMI membership.

sought is not software, OMI shall consider and may enter into negotiations with any organization wishing to reproduce, embed and/or distribute such OMI copyrighted materials within their proprietary documentation (hardcopy and online) and within their applications.

9 Limitation of Liability

The Formal Corporation Policy and all Materials licensed or otherwise provided hereunder are provided “as is”, without warranty of any kind, express or implied, and OMI and its Members expressly disclaim any warranty of merchantability, fitness for a particular or intended purpose, accuracy, completeness, non-infringement of third party rights, or any other warranty.

In no event shall OMI, its Members, Affiliates, or Board, or any of its committees be liable to any other person or entity for any loss of profits, loss of use, direct, indirect, incidental, consequential, punitive, or special damages, whether under contract, tort, warranty, or otherwise, arising in any way out of this Policy, whether or not such party had advance notice of the possibility of such damages.

OMI assumes no responsibility to compile, confirm, update or make public any assertions of Essential Claims or other intellectual property rights that might be infringed by an implementation of a Formal Corporation Policy. OMI is not responsible for either identifying patents for which a license may be required to implement the Formal Corporation Policy or for conducting inquiries into the legal validity or scope of those patents that are brought to its attention. OMI shall notify its Members via email of any patent claims leveled against the Formal Corporation Policy.

10 Termination

The obligations of Copyright License Grants and Limited Non-Assertion Covenants made under this Intellectual Property Policy shall survive a Member’s termination of membership, and a non-member’s cessation of participation, in OMI.

11 Amendment

This policy may be amended in accordance with the procedures for approving a Formal Corporation Policy in the Bylaws. No amendment shall come into force until thirty (30) days after approval.

Appendix A: Copyright License Grant

1 Software copyright

Any software copyright license granted shall be the current version of the MIT License.

2 Other copyrights

The undersigned, on its own behalf and that of its Affiliates, with respect to their collective interests in the copyrights associated with the Contribution “_____,” grants to OMI a perpetual, irrevocable, non-exclusive, royalty-free, worldwide copyright license, with the right to directly and indirectly sublicense:

- to copy, publish, and distribute the Contribution in any way;
- to prepare derivative works that are based on or incorporate all or part of the Contribution;
- to incorporate any Contribution regardless of media or form, and any subsequent modifications thereof, in the Formal Corporation Policy;
- to permit OMI to own and register copyrights in OMI’s name of the Formal Corporation Policy, even though it may include portions of said Contributions; and
- to permit others, at OMI’s discretion, to reproduce in whole or in part the resulting Formal Corporation Policy.

for the purpose of developing and promoting the Formal Corporation Policy and enabling the implementation of the same by its Members.

The capitalized terms of this grant shall be interpreted as defined in the OMI Intellectual Property Policy.

Signature Grantor of License

Appendix B: Limited Non-Assertion Covenant

The undersigned, on its own behalf and that of its Affiliates, agrees to not assert any of its ownership interests in the Essential Claims associated with the Formal Corporation Policy against any party for making, having made, using, marketing, importing, offering to sell, selling, and otherwise distributing Covered Products.

The capitalized terms of this covenant shall be interpreted as defined in the OMI Intellectual Property Policy.

This covenant shall survive the undersigned grantor's termination or withdrawal as a Member or Participant.

Signature Grantor of Limited Non-Assertion Covenant

Appendix C: MIT License

Copyright <YEAR> <COPYRIGHT HOLDER>

Permission is hereby granted, free of charge, to any person obtaining a copy of this software and associated documentation files (the “Software”), to deal in the Software without restriction, including without limitation the rights to use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies of the Software, and to permit persons to whom the Software is furnished to do so, subject to the following conditions:

The above copyright notice and this permission notice shall be included in all copies or substantial portions of the Software.

THE SOFTWARE IS PROVIDED “AS IS”, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THE USE OR OTHER DEALINGS IN THE SOFTWARE.

Appendix D: Contributions and Exclusions

To: Open Music Initiative

Description of Contribution:

The undersigned _____ (name of Participant undersigned), on its own behalf and that of its Affiliates, with respect to their collective interests in the associated Contribution identifies the following Copyright Interests in such Contribution:

The following is a list of inventions, improvements and other intellectual property that have been made, created, conceived, or reduced to practice either (i) prior to the Participant’s involvement, or (ii) entirely outside Participant’s involvement with OMI that are **specifically excluded** from the Contribution:

Description of Invention, improvement, or other IP Relationship	List of Parties	Describe
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Signature of Participant