



Version 2.0

Approved: August 28, 2003

STORAGE NETWORKING INDUSTRY ASSOCIATION (SNIA) INTELLECTUAL PROPERTY POLICY

1. PURPOSE

The purpose of this Intellectual Property Policy is to facilitate the development of SNIA Architecture and to enable the SNIA, SNIA Members, and SNIA Participants to reproduce, distribute and use SNIA Architecture.

2. DEFINITIONS

2.1 Actual Knowledge means personally known to the individuals who participate in SNIA activities, without such individuals or an Adopting Party being required to conduct a patent search.

2.2 Adopting Party(ies) means each and every Member and Participant.

2.3 Affiliate means any entity that is directly or indirectly controlled by, under common control with, or that controls an Adopting Party. For purposes of this definition, control means direct or indirect ownership of or the right to exercise: (a) greater 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) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity.

2.4 Compliant Portion means the portion or portions of a product that implement and are compliant with SNIA Architecture applicable to the product.

2.5 Contributed Work means Work developed by an Adopting Party and designated in writing to SNIA as *contributed* to the SNIA.

2.6 Essential Claims means only those claims of patents and published patent applications owned or controlled, directly or indirectly, by an Adopting Party or its Affiliates, that are necessarily infringed in the implementation of SNIA Architecture and that an Adopting Party or its Affiliate has or hereafter obtains the right to license. A claim is necessarily infringed only where there is no commercially reasonable non-infringing alternative. Essential Claims does not include:

(i) claims that, if licensed, would require the payment of royalties by the licensor to or the consent of an unaffiliated third party, where licensor has made a good faith effort to obtain such consent and such consent has been withheld;

SNIA IP Policy – Version 2.0

(ii) any claims other than as set forth above even if contained in the same patent as Essential Claims;

(iii) design patents and registrations; or

(iv) claims which would be infringed only by:

a. portions of an implementation that are not required by the SNIA Architecture; or

b. enabling technologies that may be necessary to make or use any product or portion thereof that complies with SNIA Architecture, but are not themselves expressly set forth in SNIA Architecture (e.g., semiconductor manufacturing technology, compiler technology, object-oriented technology, basic operating system technology, and the like); or

c. the implementation of technology not developed under the auspices of the SNIA or contributed to the SNIA, which is merely incorporated by reference into SNIA Architecture.

2.7 Intellectual Property Rights means rights in patents and copyrights anywhere in the world, including, without limitation, Essential Claims.

2.8 Joint Work means Work developed by one or more employees of an Adopting Party jointly with one or more employees of other Adopting Parties for and in the course of Participation in the SNIA.

2.9 Member means a Voting Member of SNIA as defined in the SNIA corporate bylaws.

2.10 Notice of Intent to Designate means the notice referred to in Section 3.1 hereof.

2.11 Participant means a Participant in SNIA as defined in the SNIA corporate bylaws, including, without limitation, individual Participants.

2.12 Participate(d) (and Participation), when used in reference to a TWG, means that an Adopting Party, after the effective date of this Policy: (i) joined the TWG as a member; (ii) attended three or more meetings of the TWG (in person or by telephone) within any 12-month period (This subsection permits attendance as a monitor for up to two meetings); or (iii) Contributed Work to the TWG or to the SNIA for consideration by the TWG.

2.13 Review Period means the review period defined in Section 3.3.1 hereof.

2.14 Single Work means Work developed by one or more employees of a single Adopting Party for and in the course of participation in the SNIA.

SNIA IP Policy – Version 2.0

2.15 SNIA Architecture means Technical Work related to storage networking that is formally designated as SNIA Architecture by the Board of Directors of the SNIA and expressly made subject to this Policy.

2.16 Specified SNIA Architecture means the SNIA Architecture developed, contributed, modified, or recommended, in whole or any part, by a TWG in which the Adopting Party Participated.

2.17 TWG means a SNIA Technical Working Group.

2.18 Technical Work means Work which is developed, created, modified, or accepted by a TWG, a Technical Steering Group, or the Technical Council in the course and scope of its activities. Technical Work may include Single Work, Joint Work, and Contributed Work.

2.19 Work means architecture, specifications, proposed standards, information, data, materials, publications, white papers, presentations, proposals, software, firmware, computer programs, and code, but does not include hardware or mask works.

2.20 SNIA Work-in-Progress means Technical Work in draft form that the Board of Directors of SNIA might ultimately consider for formal designation as SNIA Architecture, and includes a trial use draft, a working draft, a technical proposal, a formal review draft, and a final text of proposed SNIA Architecture.

3. INTELLECTUAL PROPERTY

3.1 Designation of SNIA Architecture. In accordance with the SNIA's corporate bylaws, the Board of Directors of SNIA may formally designate SNIA Architecture for voluntary use by the industry and for consideration by industry standard-setting bodies. Prior to such formal designation and prior to the submission of SNIA Architecture to the membership for approval, the Board of Directors shall make available to Adopting Parties a copy of a SNIA Work-in-Progress that is proposed to be designated SNIA Architecture, and the Board shall give at least 60 days prior written notice to Adopting Parties of its intent to designate SNIA Architecture ("Notice of Intent to Designate").

3.2 Ownership of Rights.

3.2.1 The Intellectual Property Rights to Single Work shall be owned by the Adopting Party that developed the Work. Such Adopting Party shall have the right to obtain in its own name patents, copyrights, registrations and similar other protections.

3.2.2 The Intellectual Property Rights to Joint Work shall be owned by the Adopting Parties that developed the Work or as they may otherwise agree. Such Adopting Parties shall have the right to obtain in their own name patents, copyrights, registrations and similar other protections.

3.2.3 The SNIA may own the Intellectual Property Rights in Work where such rights have been assigned or transferred to the SNIA or where the SNIA is the owner under applicable legal principles.

SNIA IP Policy – Version 2.0

3.3 Limited Duty to Disclose.

3.3.1 Review Period. A TWG, a Technical Steering Group, or the Technical Council, with the approval of the Board of Directors, or the Board of Directors on its own initiative, may release a SNIA Work-in-Progress for review by Adopting Parties. Reviews shall be initiated at appropriate milestones during the development of a SNIA Work-in-Progress, when it is determined that the SNIA Work-in-Progress, or a material part thereof, is sufficiently developed and fixed so as to warrant the disclosure obligations of Section 3.3.2. In general, reviews for a particular SNIA Work-in-Progress should be initiated every six (6) months, except the Board of Directors may allow the initiation of a more frequent review when there is a compelling reason to do so. The review period (“Review Period”) shall be not less than sixty (60) days. A request for review pursuant to this section shall specifically refer the Adopting Party to this Policy and request that the Adopting Party comply with the obligations created by Section 3.3.2 and Section 3.3.3.

3.3.2 Limited Duty to Disclose. If and when SNIA Work-in-Progress is released for review to an Adopting Party pursuant to Section 3.3.1, the Adopting Party shall make reasonable and good faith efforts during the Review Period to disclose in writing to the TWG any Essential Claims in the SNIA Work-in-Progress (assuming it were to be designated as SNIA Architecture) of which Adopting Party has Actual Knowledge. Further, prior to the end of the Review Period, Adopting Party shall disclose in writing to the SNIA, if the Adopting Party would be unwilling to license any Essential Claims (of which it has Actual Knowledge) in the SNIA Work-in-Progress in accordance with Section 3.5 hereof, assuming that the SNIA Work-in-Progress were designated SNIA Architecture. This duty to disclose includes Essential Claims contained in published patent applications, but not in unpublished patent applications, but if an Essential Claim issues from an application, or is published, prior to SNIA’s final designation of SNIA Architecture, then Adopting Party shall make reasonable and good faith efforts to disclose such Essential Claims after issuance or publication, provided that such Adopting Party has Actual Knowledge of such Essential Claims. Disclosure of a patent or patent application is not an admission that the patent or patent application necessarily contains Essential Claims.

3.3.3 Exception to Duty to Disclose. If an Adopting Party is requested to review a SNIA Work-in-Progress pursuant to section 3.3.1, and if an Adopting Party did not Participate in a TWG that developed, contributed, modified, or recommended any portion of the SNIA Work-in-Progress, the Adopting Party may opt out of the duties imposed by Section 3.3.2 by sending written notice of its intent to opt out to the SNIA Board of Directors or its Executive Director before the end of the Review Period. Provided, however, that an Adopting Party that “opts out” shall be subject to the consequences specified in Section 3.4.2 and Section 3.5.2 hereof.

3.3.4 Non-Participation in TWG. An Adopting Party that gives notice that it would be unwilling to license Essential Claims in accordance with Section 3.5 shall, if the TWG requests in writing, cease its Participation in the TWG.

SNIA IP Policy – Version 2.0

3.4 Obligation to License Essential Claims in Contributed Work, Single Work, and Joint Work.

3.4.1 Contributed Work, Single Work, and Joint Work. An Adopting Party, for itself and its Affiliates, agrees to grant a license under its Essential Claims on the request of another Adopting Party with respect to its Contributed Work, Single Work, and Joint Work, if the Contributed Work, Single Work, or Joint Work is incorporated in Specified SNIA Architecture. The license shall:

(i) permit the requesting Adopting Party and its Affiliates to make, have made, use, import, sell, offer for sale, and otherwise distribute products using the Contributed Work, Single Work, or Joint Work to the extent such Work is incorporated in Specified SNIA Architecture. Such licenses: (a) must be nonexclusive and worldwide; (b) must be on reasonable and nondiscriminatory terms and conditions; (c) may be granted either for or without compensation; (d) may be limited to Compliant Portions; and (e) may be conditioned on a reciprocal license of comparable scope from the licensee under any Essential Claims owned or controlled by the licensee or its Affiliates.

(ii) permit SNIA on a royalty free basis to reproduce and distribute the Contributed Work and Joint Work for the purpose of developing Specified SNIA Architecture, and to develop and distribute SNIA approved interoperability and conformance tests for SNIA Specified Architecture.

3.4.2 Exception to Obligation to License. Notwithstanding Section 3.4.1, Adopting Party need not grant a license with respect to Contributed Work, Single Work, and Joint Work to an Adopting Party that is not willing to grant reciprocal licenses under reasonable and nondiscriminatory terms and conditions, including reasonable compensation, to its own Essential Claims in such Work, if that Adopting Party opted out of the duty to disclose the existence of its Essential Claims pursuant to Section 3.3.3 with respect to SNIA Architecture containing such Work.

3.5 Obligation to License Essential Claims in Specified SNIA Architecture .

3.5.1 Obligation to License. If an Adopting Party Participated in a TWG that developed, contributed, modified, or recommended any portion of Specified SNIA Architecture, then the Adopting Party, for itself and its Affiliates, agrees to grant:

(i) a license under its Essential Claims on the request of another Adopting Party, permitting the requesting Adopting Party and its Affiliates to make, have made, use, import, sell, offer for sale, and otherwise distribute products using the Specified SNIA Architecture. Such licenses: (a) must be nonexclusive and worldwide; (b) must be on reasonable and nondiscriminatory terms and conditions; (c) may be granted either for or without compensation; (d) may be limited to Compliant Portions; and (e) may be conditioned on a reciprocal license of comparable scope from the licensee under any Essential Claims owned or controlled by the licensee or its Affiliates.

(ii) a royalty free license under its Essential Claims to SNIA for the purpose of permitting SNIA to reproduce and distribute the Specified SNIA Architecture and to

SNIA IP Policy – Version 2.0

develop and distribute SNIA approved interoperability and conformance tests for Specified SNIA Architecture.

3.5.2 Exception to Obligation to License. Notwithstanding Section 3.5.1, Adopting Party need not grant a license with respect to Specified SNIA Architecture to an Adopting Party that is not willing to grant reciprocal licenses on reasonable and nondiscriminatory terms and conditions, including reasonable compensation, to its own Essential Claims in the SNIA Architecture, if that Adopting Party opted out of the duty to disclose the existence of its Essential Claims in the SNIA Architecture pursuant to Section 3.3.3.

3.5.3 No Circumvention An Adopting Party shall not transfer or assign Essential Claims for the purpose of circumventing the obligations hereof.

3.6 Copyright License. Each Adopting Party hereby grants to the SNIA and to each other Adopting Party a nonexclusive, worldwide, perpetual, and royalty-free license under Adopting Party's copyrights to reproduce, display, perform and make derivative works of its Contributed Work and its interest in Technical Work for the purpose of developing and distributing Works-in-Progress, and for the purpose of developing, distributing and using SNIA Architecture.

3.7 Trademarks. SNIA may adopt and shall own its trademarks. SNIA may choose to seek and maintain trademark registrations in such jurisdictions as it may choose, may license the right to use such trademarks on terms and conditions adopted by the Board of Directors, and protect the trademarks by prosecuting infringers and defending against trademark-infringement claims, all as the Board of Directors may determine. Adopting Parties shall have no right to use a SNIA trademark as a trademark, except under license from SNIA.

3.8 Threat of Infringement. If any claim is made or threatened (or if, in the opinion of SNIA, such a claim is likely) that the use by any Adopting Party of any SNIA Architecture infringes any intellectual property rights of such party, SNIA is not required to take any action, but SNIA may, in its discretion, disclose information regarding such claim or threat.

4. APPLICATION OF POLICY

This Policy is binding in accordance with its terms on each Member and Participant of SNIA, all of whom are deemed Adopting Parties. This Policy is effective as of the date it is approved by the Board of Directors of the SNIA, as stated on the last page hereof. This Policy supersedes and replaces the SNIA Intellectual Property Policy adopted on September 1, 1998.

5. TERMINATION AND SURVIVAL OF OBLIGATIONS

5.1 Termination of Obligations. An Adopting Party that ceases to Participate in a TWG may terminate its obligations under this Policy on giving written notice to the SNIA of such intent to terminate. An Adopting Party terminating its obligations hereunder shall also give written notice of Essential Claims of which it has Actual Knowledge in any SNIA Work-in-Progress then being considered by a TWG in which the Adopting Party has been Participating. Except as set forth in Section 5.2, such termination shall be effective as to Specified SNIA Architecture designated after SNIA's receipt of Adopting Party's notice of termination.

SNIA IP Policy – Version 2.0

5.2 Survival of Obligations. An Adopting Party’s obligations under this Policy survive termination under Section 5.1 with respect to all Specified SNIA Architecture adopted prior to the Board’s receipt of an Adopting Party’s notice of termination, and the obligations also survive with respect to Specified SNIA Architecture from a TWG in which the Adopting Party continues to Participate. In addition, the obligations under this Policy exist and survive with respect to: (i) any of Adopting Party’s Contributed Work whenever and to the extent included in Specified SNIA Architecture; (ii) Adopting Party’s interest in Technical Work whenever and to the extent included in Specified SNIA Architecture; (iii) any SNIA Work-in-Progress whenever and to the extent included in Specified SNIA Architecture if a Review Period for the SNIA Work-in-Progress began before the Adopting Party’s notice of termination, and the Adopting Party, if it had an obligation to do so, did not disclose in writing during the Review Period that it would be unwilling to license Essential Claims in accordance with Section 3.5; and (iv) Specified SNIA Architecture with respect to which the Board of Directors gave written Notice of Intent to Designate, as provided in Section 3.1, at least thirty days prior to receipt of Adopting Party’s notice of termination.

5.3 No Entitlement. Notwithstanding any other section of this Policy, an Adopting Party that is relieved of an obligation to grant a license with respect to Specified SNIA Architecture or otherwise refuses to grant a license under reasonable and nondiscriminatory terms and conditions to a SNIA Architecture pursuant to this Policy shall not be entitled under this Policy to obtain a license from other Adopting Parties with respect to such SNIA Architecture, and any license granted to such Adopting Party with respect to such SNIA Architecture shall be subject to termination by other Adopting Parties.

6. NO LIABILITY

6.1 No Indemnification. SNIA will not provide and does not owe any duty to provide indemnification or defense with respect to an Adopting Party’s use of Contributed Work, Technical Work, Single Work, Joint Work, SNIA Work-in-Progress and/or SNIA Architecture, nor does any Adopting Party owe any such duty to any other Adopting Party or to SNIA by reason of this Policy.

6.2 No Warranty. ALL CONTRIBUTED WORK, SINGLE WORK, JOINT WORK, TECHNICAL WORK, SNIA WORK-IN-PROGRESS, AND/OR SNIA ARCHITECTURE PROVIDED BY SNIA TO AN ADOPTING PARTY OR PROVIDED BY AN ADOPTING PARTY TO SNIA OR TO ANY OTHER ADOPTING PARTY IS PROVIDED “AS IS” AND WITHOUT ANY WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

6.3 No Obligation. Each Adopting Party is responsible for securing its own licenses or rights to any Intellectual Property Rights that may be held by another Adopting Party or by a third party. SNIA has no obligation to secure any such rights.

SNIA IP Policy – Version 2.0

6.4 No Liability. IN NO EVENT WILL SNIA OR ANY ADOPTING PARTY BE LIABLE TO ANY OTHER ADOPTING PARTY OR TO SNIA FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, 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.

7. NON-CONFIDENTIALITY

All information disclosed by an Adopting Party in the course of participation in SNIA shall be considered nonconfidential, unless the disclosing party designates information as confidential, in writing, prior to such disclosure, and the confidential information is covered under a written confidentiality agreement that is acceptable to both the disclosing and the receiving parties.

8. NO OTHER LICENSES

Except for the rights expressly provided by this Policy, no Adopting Party grants or receives hereunder, by implication, or estoppel, or otherwise, any rights under or to any Intellectual Property Rights.

APPROVED BY RESOLUTION OF THE BOARD OF DIRECTORS OF THE STORAGE NETWORKING INDUSTRY ASSOCIATION ON AUGUST 28, 2003.

ACKNOWLEDGED AND AGREED BY MEMBER/PARTICIPANT:

Signature: _____

Print Name: _____

Title: _____

Company Name: _____

Company Address: _____

Date: _____