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TITLE: Status of Discussion in the Ecma IPR Adhoc Group on an experimental Royalty Free patent policy extension for TC39 projects, and request for a postal ballot

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STATUS: For Information and Action

At its first meeting in April 2012 the Ecma IPR Adhoc Group received a contribution from an active TC39 member, with a proposal for a Royalty Free option in the Ecma patent policy.

The motivation for this proposal is that participants in TC39 generally worked on the ECMAScript project under the assumption (or the hope) that the standard, having become an essential landmark of the Internet (on par with HTML), would enjoy a royalty free regime for any essential patent applicable to ECMA-262. However, that assumption and/or goal were disconnected from the Ecma patent policy, which ensures that, unless the GA is duly notified before approval of a standard, Ecma members will license their needed patents, either on RAND or RF terms.

At the first meeting the IPR Adhoc Group has also received another proposal on the same subject, agreeing with and supporting the RF goal, but proposing a minimum set of changes and staying closer to the current Ecma policy.

The proposal aimed at making modifications to the Ecma Patent Code of Conduct in Patent Matters, with a new option enabling specific Ecma standards projects (such as those of TC39) to become Royalty Free standards. This would not be a deviation from the current Ecma patent policy, but an extension in a particular, well bound case.

The IPR Adhoc Group, recognizing the need expressed by TC39, supported the development of such an extension of the patent policy. However, the idea is to do this on an experimental basis limited to TC39.

Good progress had been made in developing the extension to the policy. There is agreement on the requirements to address and also agreement in principle on how to solve them. There is still work to be done to develop the text of the experimental policy, so the proposal could not be completed for the June 2012 Ecma GA.

Looking at the progress made so far and the meetings scheduled, the IPR Adhoc group hopes that the proposed experimental policy extension can be made available for review by the Ecma members, and a postal ballot launched to approve it in the September/October timeframe. An approval before the December 2012 GA would make the situation clearer in TC39 and therefore ease the progression of its work.

Therefore the June 2012 Ecma GA is requested to allow the initiation of a postal ballot by the Ecma Secretariat, provided the IPR Adhoc Group finishes its work in time.