

Contributing to an Open Source Project

- *This guidance covers submission of bug fixes or other code to an existing third-party open source project. If you are thinking about creating your own open source project, see our separate guidance on “Creating an Open Source Project.”*

1. What are you contributing?

As a first step, determine whether the code project to which you want to contribute, or whether your specific bug-fix or other contribution, relates in any way to the products or services of your company. If the project or your anticipated code contribution does relate to your products or services, make sure to consult with your patent or other intellectual property (“IP”) counsel before making the contribution since contributing under the terms of an open source license could jeopardize your IP rights.

2. What is the contribution process?

The method by which open source projects accept contributions can vary widely, from no process at all (you simply upload your contribution) to a process under which you must sign or otherwise agree to a contribution agreement. Read the terms which apply to the open source project carefully.

3. If there is a contribution agreement required, consider the following:

a. **Contribution agreements are legally binding contracts affecting your IP rights.** Read contribution agreements very carefully; you are legally bound to license (or even assign) your copyright and patent rights with respect to the code you are contributing. In other words, contribution agreements need to be reviewed with the same level of care as any other IP-related agreement entered into by your company.

b. **Contribution agreements vary in important ways.** There are three primary types of contribution agreements.

- Under the Apache Contributor Agreement (which is used by Apache Foundation projects but also copied widely by other projects) you grant a broad patent and copyright license with respect to your contribution.
- Under the Oracle contributor agreement (which is used for Java and Sun), you grant a broad patent license and then agree to “joint ownership” with Oracle of the copyright in your contribution.
- Under the third form of contribution agreements, the contributor actually assigns all of its patent and copyright rights in the contribution to the project (albeit usually with a license back to the contributor).

c. **Your contribution is often passed through to the company behind the project, and not contributed solely to the project itself.** For example, when you make a contribution to Android, you are actually making the contribution to Google, Inc. Likewise, any contribution to Java or any Sun project is made to the Oracle Corporation. Under the terms of their contribution agreements, these companies may use the contribution for any purpose, whether related to this or any other open source project or any other proprietary product or service they may release.

d. **Your contribution under a contribution agreement may be broader than the open source license under which the project operates.** For example, Android is released under the Apache license, but contributions to Android are made directly to Google and the terms of the contribution agreement are actually broader than the terms of the Apache license and do not limit Google to merely releasing your contribution back out under the Apache license.

4. If there is no contribution agreement required, consider the following:

a. **You may need to define the terms of your contribution yourself.** Where there is no clearly designated contribution agreement or process – i.e., you simply upload your contribution directly to the repository – it is critical that you clearly claim copyright in your code and associate your code with the open source license of the project itself (e.g., if the project is licensed under Apache, you add Apache license references to your headers and .txt files and otherwise in any place where a license or copyright may be identified). If you do not do this, you could be at risk of a claim that you simply made the code under no license at all or committed it to the public domain.

5. Have more questions? Contact Todd Smithline at todd@smithline.com for further discussion.

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