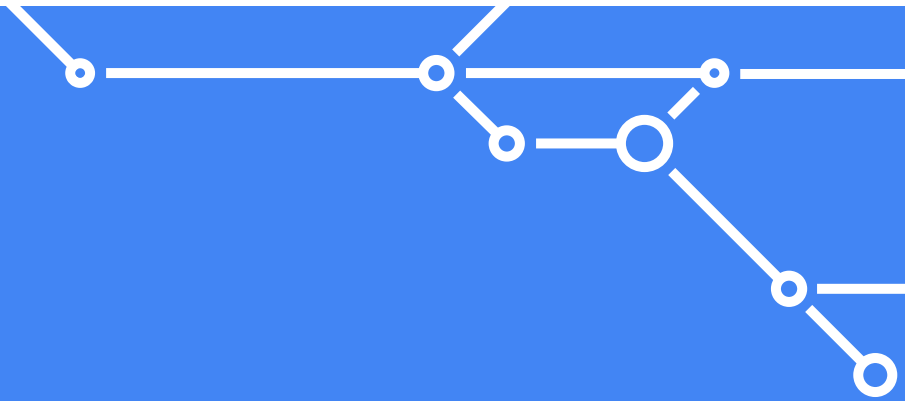


An abstract graphic on the left side of the slide consists of several horizontal and diagonal lines in blue, red, yellow, and green, connected by small circular nodes. Some nodes are filled with the same color as the lines, while others are hollow. The lines and nodes are arranged in a way that suggests a network or a flow of information.

Contributor License Agreements

A defense of the Apache CLA

opensource.google.com/docs/cla/policy



Benefits of Using the Apache Contributor License Agreement

Benefits of the Apache CLA

- **Permissive:**
 - Express license to the contribution
 - Broad permission to use the contribution (including permission to sublicense)
- **Clear:**
 - Defined procedure for contributing third-party content
 - Defined authorship model for the project
 - Widely used and understood
- **Fair:**
 - Reduces negotiation
 - Promotes a universal standard
 - Preserves contributor's copyright ownership, and has defensive suspension clause
- **Comprehensive:**
 - addresses all intellectual property rights to the contribution and all forms of contributions.

What About Developer Certificate of Origin v1.1?

- Used to accomplish the same things as a contributor license agreement
- **Pros:**
 - Simple
 - Requires less bureaucracy than CLAs
- **Cons:**
 - Not as broad of a license as the Apache CLA
 - No specific treatment for submitting code on behalf of a third party
 - Does not clarify authorship model
 - Definition of contribution is less clear
 - Requires proactivity from contributors
 - Not clear that contributions are authorized



Procedures for Using a Contributor License Agreement

Procedure

1. Use a verification mechanism to enforce the CLA for contributions to public open source projects.
2. Use contract management software to manage inbound CLAs.
3. Verify signing authority:
 - a. Email address
 - b. Corporate Title

Actual Authority

1. Doctrine of agency law found in the Restatement of Agency:
2. **Actual Authority** exists when a company's board of directors have expressly authorized an officer of the company to enter into the agreement.
 - a. "An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act." Restat 3d of Agency §2.01 (3rd 2006).
 - b. Actual authority always desired, but very difficult for contracting party to ascertain.

Apparent Authority



1. **Apparent Authority** exists when a company has vested an officer of the company with a title that reasonably conveys requisite authority to bind the company to the agreement.
 - a. “Apparent authority is the power held by an agent or other actor to affect a principal’s legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal **and that belief is traceable to the principal’s manifestations.**” Restat 3d of Agency §2.03 (3rd 2006).
 - b. A contracting party can establish apparent authority by relying on manifestations from the principal, such as a title conferred upon the officer executing the agreement.

Titles That Likely Confer Apparent Authority for CLAs



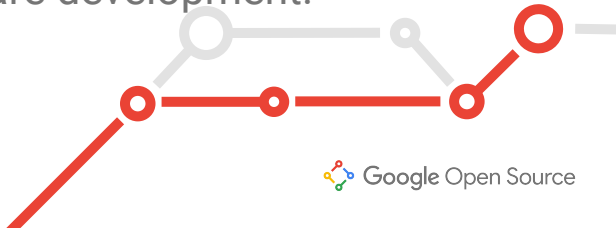
President / CEO - holds broad authority to contract on behalf of the company.

Vice-President - numerous cases establishing the apparent authority of vice-presidents to execute significant agreements on behalf of the company.

General Manager - uncommon title in tech, but there is precedent establishing authority of general managers to execute agreements.

Counsel - hold fiduciary obligation to not execute agreements without informed consent of the principal.

Chief Technology Officer / Director of Engineering - C-level officer or executive director with title closely tied to external collaboration and/or software development.



Titles That May Not Confer Apparent Authority for CLAs



Non-Executive Director - on plaintiff's motion for summary judgment, evidence that defendant's agent's title was "Director of Imports" did not establish authority to sign letters of indemnification worth \$1 million to induce plaintiff to release merchandise absent original bills of lading. [Orient Overseas Container Line v. Kids Int'l Corp.](#) 96 CIV. 4699 (S.D.N.Y. Feb. 11, 1999).

Software Engineer - a software engineer executing a CLA on behalf of an organization may lack signing authority, and could be acting independently.

Legal Assistant - the fiduciary duties of attorneys do not necessarily extend to legal assistants.



Relationship Between the Contributor License Agreement and Other Inbound Licenses

Relationship With Other Inbound Licenses



- The Apache CLA does not disturb the ownership of the content of contributions
 - Recipient only gets a license under the CLA.
 - But if the recipient is already the owner of the contribution pursuant to a separate agreement, nothing in the CLA affects this.

Relationship With Other Inbound Licenses



- Under the Apache CLA, “Contribution” encompasses all content that is intentionally submitted by the contributor for inclusion in the recipient’s products.
 - If the recipient has a non-disclosure agreement in place with the contributor, the confidentiality agreement should have terms that specifically supersede the CLA.
 - Anything that a contributor would like to submit can also be marked “Not a Contribution” to prevent the terms of the CLA from applying.



Reasons for Having a Uniform Inbound License Agreement

Uniform Inbound License

- Reduces complexity of using inbound code (all subject to the same rules)
- Is fair to everyone if everyone is contributing under the same terms
- Promotes uniformity and standard practice
- Reduces need for negotiation



Thanks for your time!

I hope you've been persuaded to adopt the Apache CLA!
Please email me at rend@google.com with any questions!

Perks of the Apache CLA Inbound License

Clear

The open source community is familiar with the Apache CLA, and the inbound license is clearly worded.

Permissive

The inbound license grants the receiving project broad permission to use the contribution.

Fair

The inbound license reserves the contributor's copyright ownership of the contribution.

Comprehensive

The inbound license addresses all intellectual property rights to the contribution and all forms of contributions.