

Apache Software Foundation

Ladies and Gentlemen:

We offer the following examples to illustrate Sun's understanding of certain provisions of the Stand-Alone TCK License Agreement:

1. With respect Section 2.1(b)(iv), examples of test suites not intended to validate compatibility with a Java Specification include:
 - ? test suites for specific implementation features (e.g. file upload) or features covered by non-Java specifications (e.g. http 1.1 tests);
 - ? performance benchmark or robustness test suites; and
 - ? interoperability test suites in excess of the requirements of the Java Specification to which the TCK corresponds (e.g. if a specification required a level 0 functionality but the product implemented level 1, level 1 tests would be permitted).
2. Also with respect to Section 2.1(b)(iv), examples of tests intended to validate compatibility with a Java Specification would include:
 - ? test suites described by their developers as tests of compatibility with the Java Specification (in whole or in part); and
 - ? test suites described by their developers as supplementing, improving, filling gaps, or containing superior tests to those included in the TCK.
3. With respect to Section 2.1(b)(v), a publicly accessible source code (of the implementation of the Java Specification - not the TCK source code) revision control system (e.g. CVS) shall not be understood to contravene the limitations concerning the distribution of code.
4. Also with respect to Section 2.1(b)(v), a publicly accessible repository of binary Products that had passed the TCK applicable when the Product had initially been released would not constitute the distribution of a product in violation of that subsection provided that a party, in accessing such earlier Products, would necessarily be presented with a clear statement of the name and version of the Java Specification implemented and the dated nature of the TCK passed by such Products. An example of the form of an acceptable statement would be:

THIS IMPLEMENTATION OF [NAME OF SPECIFICATION VERSION __]
PASSED WHAT IS NOW AN OUTDATED TCK

5. With respect to Section 2.4, Sun believes that a licensee's use of the phrase "[name of JSR] Compatible" would require a trademark license from Sun. No such license is granted under the Stand -Alone TCK License Agreement. By contrast, the statements (if

accurate) "This product passed the TCK for [name of JSR]" or "This product failed the TCK for [name of JSR]" would not require a trademark license from Sun.

6. With respect to Section 7.1, a bug report of the form (i) "we identified a problem with [name of test] producing the error message [quote]" or (ii) a report that references specification requirements addressed by a particular test such as "the test tries [action] repeatedly which causes our product to fail", filed on a publicly accessible repository would not constitute a violation of Licensee's duty of confidentiality. However, a bug report of the same forms that included specific test code blocks arguably would constitute such a violation.

7. Also with respect to Section 7.1, concerning the limited right for a Licensee to exchange comments or questions concerning its use of the TCK to a "Sun Licensee of the same TCK" Sun would consider it sufficient for Licensee to make access to such comments or questions (where they constitute Confidential Information) contingent on a party's necessarily being presented with the following notice:

This information is confidential and proprietary to Sun Microsystems, Inc. You are only authorized to access this information if you are a licensee in good standing under any of the following agreements with Sun Microsystems covering the [name of Specification] TCK -- Technology License and Distribution Agreement (TLDA) with support, a Master Support Agreement entered into in conjunction with either a Sun Community Source License or a TLDA, or a Stand-Alone TCK License Agreement -- and you may only use and distribute such information subject to such Agreement.

8. With respect to Exhibit A, Section IV, an example of an entity that would be a Qualified Not-for-Profit, with respect to the requirement that it not be owned or effectively controlled by a commercial interest, would be a not-for-profit corporation in good standing (under the laws of the state of its incorporation) who's governing body (such as a Board of Directors) consists of seven members where each member is employed by a different for-profit company and where no one of those companies is able, whether by reason of the not-for-profit's charter or its working procedures, to determine the decisions made by the not-for-profit.

9. Also with respect to Exhibit A, Section IV, an example of a person who would be a Qualified Individual, with respect to the requirement that he not be acting for or on behalf of a legally organized entity, would be an individual who presents a copy of a valid agreement with his or her employer that makes clear that the individual is acting with the consent but not under the direction or on behalf of the employer and that the employer makes no claims on any work product developed by the employee in connection with its use of the TCK. If, however, the individual was directed by his or her employer to enter into the Stand-Alone TCK License Agreement, or if the employer could claim an interest in the Product, then that individual would **not** be a Qualified Individual.