



THEGREENXCHANGE

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WHAT IS THE GREENXCHANGE?

The GreenXchange (GX) is a clearinghouse for unpatented innovations (“know-how”), patent pledges, and patent licenses. Companies participating in the GX will be able to make both patented and unpatented “know-how” available for research uses and commercialization on standard and transparent terms and conditions.

WHEN DID THE GX START?

In partnership with Creative Commons, Nike announced the GreenXchange project in January 2009 at the World Economic Forum in Davos, Switzerland.

WHY DOES THE GX EXIST?

Because there is too much duplication of effort in sustainability, and collaboration on shared challenges is a proven way to reduce costs and increase innovation. Companies face very similar sets of sustainability challenges — how to reduce resource consumption and achieve greater efficiency — but without the ability to share learning and best practices in response to those challenges, good solutions fail to take hold or make a broader impact. The GX was created to address this problem by making it easy to enable sharing and promotion of industry best practices leading to sustainability, while making sure that credit is given where it is due. The GX will also help reduce some of the barriers separating innovators from entrepreneurs in the sustainability space.

WHAT IS THE IMPACT OF THE GX?

In the short term, the GX will make it easier for companies and individuals to identify, share, and obtain licenses to available technologies. The GX will enable rapid identification of commonalities in technology across industries and in turn identify gaps in available technology.

In the long term, the GX will create a clearinghouse of public license offers for entrepreneurial development, innovation, and technology adoption.

HOW DOES THE GX WORK FROM A LEGAL PERSPECTIVE?

At the heart of the GX is a two-tier approach. First, to promote basic research, the patent owner commits to non-enforcement of patents against users engaged in basic non-profit research (“the Research Non-Assertion Pledge”).

Second, the patent owner may provide a public license offer to enable use of specific patents chosen by the patent owner for

applications beyond non-profit research. In return, users may be asked to provide usage metrics, patent marking and attribution, and in some cases, pay a fee as determined by the patent owner. (However, patent owners are strongly encouraged to consider offering licenses without fee when possible, and otherwise to charge only reasonable and non-discriminatory fees.)

WHAT IS THE SCOPE OF THE RESEARCH NON-ASSERTION PLEDGE?

The Research Non-Assertion Pledge is a commitment by a company not to assert its patents against anyone (whether an individual scientist or an institution) for engaging in activities related only to qualified non-profit research. This is intended to enable the kind of research that takes place at universities and other academic, government, and non-profit institutions. The text of the Research Non-Assertion Pledge, which contains a precise definition of what users may qualify, is available upon request.

DOES THE RESEARCH NON-ASSERTION PLEDGE COVER ALL OF A COMPANY'S PATENTS?

Patent owners are encouraged to consider adopting this policy widely to cover all their patents. However, a patent owner has ultimate control over what patents to dedicate to the Research Non-Assertion Pledge. Therefore, a patent owner may pledge all or some of its patents under the Research Non-Assertion Pledge. It can do so by providing a list of patents to be included, or conversely by stating an overall policy but listing patents excluded from the Pledge.

WHAT ARE THE PUBLIC LICENSE OFFERS AND WHAT PURPOSE DO THEY SERVE?

To promote use of sustainable technologies requires adoption and application of the technology in the real world, which goes beyond basic research. Therefore, a license to use the technologies in real world applications, including some commercial ones, is needed. Companies wishing to provide such licenses may either adopt the Model Patent License that is available through the GX, or they may offer their own.

WHAT ADVANTAGES DOES THIS APPROACH OFFER OVER TRADITIONAL LICENSE NEGOTIATIONS FOR USES RELATED TO SUSTAINABILITY?

The criteria for inclusion of a patent license offer in the GX, whether based on the Model Patent License or a custom one, is that the terms and conditions of the license must be fully specified and made publicly available and that the offer must be a valid offer that can be accepted by anyone without the need for further negotiation. These two criteria constitute what we call a "public license offer," the primary benefits of which are its transparency and low transaction costs. The transparency and non-discriminatory

terms permit entrepreneurs and potential adopters to plan and make early decisions about technology adoption, while the low transaction costs allows a patent owner to offer a license widely without incurring large administrative and negotiation costs. These two factors can bridge the otherwise difficult and unpredictable license negotiation process, which can deter technology adopters or trigger economically wasteful design-around attempts.

The history of innovation highlights the value of the unanticipated uses of a technology. Both the Research Non-Assertion Pledge and the public license offers are options for not only promoting and widely disseminating technologies that can solve global sustainability challenges, but they may also stimulate interest in broader or unanticipated applications of existing technologies as well (see *What About Moving Beyond Sustainability Licenses?*).

HOW DOES THE GX WORK FROM A SOCIAL AND TECHNICAL PERSPECTIVE?

The GX leverages breakthroughs in Web-enabled copyright licensing first developed by Creative Commons. Creative Commons licenses exist in three forms — in addition to the traditional “lawyer readable” version, there is a “human readable” summary and a “machine readable” version. These additional versions make sure that users and owners share a common set of expectations. In addition, the “machine-readable” version creates vast increases in patent landscape transparency while assisting in the development of gap analysis (e.g., “how many patents are in the GX related to climate that I can use as a non profit organization?”) via Creative Commons’ existing integration into systems like Google search, Yahoo! search, Microsoft Office document creation, and more.

WHO USES THE GX?

There are at least three kinds of users. The first kind is the company with innovations to share — technology that can bring efficiency and resource stability, but only if it gets used broadly or licensed for uses outside of a company’s core business. The second kind of user is the company looking for technologies to use internally — to reduce costs and resource consumption. The third kind is the green researcher, whether academic or entrepreneurial. All these users will benefit from the freedom to innovate and perform research offered by the Research Non-Assertion Pledge and from the transparency of the public license offers, as well as “know-how” sharing.

HOW IS IT DIFFERENT FROM OTHER PROJECTS IN THE PATENT SHARING SPACE?

Significant and important efforts to share patents have been undertaken in software, biotechnology, and environmental technology. In addition, major information technology companies have pioneered the use of standard licenses on significant elements of their own patent portfolios, to reduce transaction costs and increase transaction flow. The CAMBIA project in Australia pioneered an “open” patent project called BIOS for use on agricultural and biotechnology inventions, IBM developed the Non-Assertion Against Open Source Software for open source software, and the World Business Council Sustainable Development has implemented the Eco-Patent Commons.

The primary differences between these efforts and the GX are the types of non-assertion pledges and licenses offered. The Eco-Patent Commons and Linux Patent Commons use patent pledges (non-assertions) exclusively, for both commercial and non-commercial uses. By contrast, the Research Non-Assertion Pledge of the GX is targeted specifically for non-profit research, while the public licenses offer a path to commercial applications. The legal relationship offered by a license offers a mechanism for the licensors to track and measure impact (and in some cases, to require monetary consideration) and gives the licensee the legal protections associated with having an executed agreement in place.

The GX is unique in leveraging the “some rights reserved” approach of Creative Commons and applying it to patents. In addition, the GX is technologically different from other patent sharing efforts. By using standard formats to describe both patents and rights, the GX enables integration with major search engines, software systems, content creation systems, and the creation of patent gap analysis.

WHAT ABOUT MOVING BEYOND SUSTAINABILITY LICENSES?

Although the GX itself was originally designed as being specifically for sustainability, patent owners may offer licenses for additional fields or all fields. In fact, patent owners are encouraged to license as broadly as possible, and employ field of use limitations only when necessary to protect a defensive or competitive use of a patent. Innovations often have applications that extend to many different areas, and many applications yet to be realized. Therefore, offering to license in a broad or unlimited field of use will ensure the broadest impact and greatest degree of innovation. The underlying technical standards for the GX can support a wide array of license options for socially desirable areas such as rare diseases and disaster mitigation.

WHAT IF SOMEONE VIOLATES THE PATENT LICENSE?

Owners do not abandon their patents under the GX — they retain the ownership of the patent rights, with full ability to enforce the terms of the license or non-assertion. If the user is found to violate the conditions of the license, the patent owner retains the full right to pursue remedies and damages under the law.

IS THE GX ONLY ABOUT PATENTS?

Not at all. It is fully expected that a significant portion, if not the majority, of technologies shared through the GX will be unpatented “know-how.” These can be process innovations within companies that have not before been made public or widely shared. Through the GX, a company can publish “know-how” and best practices for all to learn from. Know-how can be just as important, and make just as significant an impact, as any patented technology. Know-how in the GX will be made publicly available and does not require licensing.

WHAT IS THE GOVERNANCE AND FUNDING STRUCTURE OF THE GX?

The GX is not a formal entity but exists as a virtual collaborative network built on technology and standards developed by the non-profit organization, Creative Commons. Creative Commons is developing tools and infrastructure for the GX under generous grants from founding sponsors and collaborators (Nike, Yahoo!, Best Buy, Mountain Equipment Co-Op, 2degrees, IDEO, nGenera, OIA and salesforce.com), but Creative Commons does not administer, own, or control the GX. Financial contributions to Creative Commons support the development of these public tools and standards used by the GX and are considered charitable donations under U.S. tax law.

WHAT ABOUT THE LONG-TERM FUNDING OF THE GX?

As a virtual collaboration, the GX does not require dedicated administrative staff or overhead. Initial funding for development of public infrastructure on which the GX is built comes from the founding organizations, and it is expected that additional support will be raised through charitable foundations and corporate sponsors. Ideally, this funding will help to integrate the GX with existing patent efforts like the “patent lens” informatics from Institute for Open Innovation (IOI), and into climate and economic models. This integration will also explore the impact of patent and “know-how” sharing and the impact of report cards for companies based on the resources conserved by sharing a portfolio or adopting certain innovations, and more. In the long run, the collaborators may explore ways to fund further development and growth through value-added services in the GX.

PARTNERS:



MAKE THE EXCHANGE

www.greenxchange.com