



Tier 2 IP Policy

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1 Introduction

CONSIDERING that the Convention Establishing the Square Kilometre Array Observatory (hereinafter referred to as the "Convention") established the Square Kilometre Array Observatory (the "SKAO") as an international organisation with legal personality in each Member State;

RECOGNISING that the SKA Project, as a large, global, cutting-edge science enterprise, will require the use of existing and new innovations to fulfil its mission of developing, constructing, and operating the SKA Observatory (SKAO);

APPRECIATING that the SKA Project will support and require worldwide cooperation among many parties in the development, deployment, and exploitation of existing and new technologies and applications, and their associated Intellectual Property Rights;

ACKNOWLEDGING that a common approach on how to address issues of Intellectual Property is essential in view of the needs of the SKAO and of the Member States;

NOW THEREFORE the Council of the SKAO, duly constituted in terms of Article 8 of the Convention, and in execution of Article 11(1) of the Convention, approves this SKA Observatory Intellectual Property Policy.

2 Policy Statement

This Policy shall come into effect on 1st May 2021 ("Effective Date").



3 Body of Policy

3.1 Background IP

- 3.1.1 Each party shall retain ownership of the Background IP they bring to the SKA Project.
- 3.1.2 SKA Contributors shall notify SKAO of any Background IP that they intend to use as part of their contribution to the SKA Project within any submission or proposal made by the SKA Contributor to the SKA Project, or as soon as reasonably practicable after becoming aware if additional Background IP is discovered to be provided following provision of the submission or proposal.
- 3.1.3 SKAO shall record any Background IP notified under section 3.1.2 in the IP Register.
- 3.1.4 Subject to 3.1.6, SKA Contributors shall grant SKAO a non-exclusive, non-transferable, royalty-free, worldwide, perpetual and irrevocable licence to that SKA Contributor's Background IP as notified under section 3.1.2, including the right to sublicense, where the Background IP is required to be used solely for the SKA Project.
- 3.1.5 Subject to 3.1.6, SKA Contributors shall grant other SKA Contributors a non-exclusive, non-transferable, royalty-free, worldwide licence to that SKA Contributor's Background IP as notified under section 3.1.2, where the Background IP is required to be used by the other SKA Contributor solely for the SKA Project.
- 3.1.6 Further to clause 3.1.1, SKA Contributors shall notify SKAO of any Background IP for which they cannot provide a licence to SKAO under the terms of section 3.1.4. SKAO may request that the SKA Contributor amends the submission or proposal to exclude that Background IP, or SKAO may choose to negotiate a licence agreement for that Background IP.
- 3.1.7 Further to clause 3.1.1, SKA Contributors shall notify SKAO if they intend to use any IP that is not their Background IP. SKAO may request that the SKA Contributor amends the submission or proposal to remove the need for such use, or SKAO may choose to negotiate a licence agreement for that IP if required.
- 3.1.8 For the avoidance of doubt, IP that has been considered background intellectual property under the SKA Organisation intellectual property policy, shall be treated as Background IP under this Policy.



3.2 Foreground IP

- 3.2.1 Ownership of any Foreground IP shall remain with its owner.
- 3.2.2 SKA Contributors shall notify SKAO of any Foreground IP that is created as part of their contribution to the SKA Project as soon as reasonably practicable after becoming aware of that Foreground IP.
- 3.2.3 Should the Foreground IP be registerable, SKAO may require the SKA Contributor to permit the SKAO to pursue registration at SKAO's cost if that SKA Contributor declines to pursue appropriate protection for the Foreground IP itself. In that event, the SKA Contributor shall notify the SKAO, and the SKA Contributor will do all things necessary to enable the SKAO to obtain protection of the Foreground IP.
- 3.2.4 SKAO shall record any Foreground IP notified under sections 3.2.2.2 and 3.2.3 in the IP Register. Foreground IP that is created by SKAO shall also be recorded in the IP Register.
- 3.2.5 SKA Contributors shall grant SKAO a non-exclusive, non-transferable, royalty-free, worldwide, perpetual and irrevocable licence to use and sub-license their Foreground IP for the purpose of the SKA Project.
- 3.2.6 The licence granted to SKAO within clause 3.2.5 includes the right to sub-license to SKA Contributors in accordance with Article 11.4 of the SKA Observatory Convention. Accordingly, the Foreground IP may be sub-licensed, subject to obtaining appropriate licenses to existing Background IP rights and third-party IP rights, for SKA Project purposes and other non-commercial research and education purposes. Such sub-licenses should not, however, cover activities undertaken by sub-licensees in competition with the owner of the Foreground IP.
- 3.2.7 Clause 3.2.6 shall not apply to the sublicensing of Foreground IP that was developed prior to the Effective Date, but which is classed as Foreground IP under clause 3.2.12 of this Policy.
- 3.2.8 Entities within a Member State or Associate Member State may request to consult the IP Register to identify whether it contains Foreground IP for which they may see an application outside the scope of the SKA Project and for which they might seek a licence.
- 3.2.9 On request, and by agreement of Council, SKAO may grant SKA Contributors a non-exclusive, non-transferable, royalty-free, worldwide, perpetual and irrevocable licence to SKAO's Foreground IP on an equal, non-discriminatory basis, for non-commercial, non-SKA Project use.



- 3.2.10 Foreground IP generated by employed and seconded staff to the SKAO, shall be owned by SKAO unless the SKAO expressly agrees to the contrary. The SKAO Council shall determine appropriate terms and conditions for the remuneration of SKAO staff who generate IP.
- 3.2.11 So that the SKAO can assess and (where appropriate) publicise the wider social, commercial and economic significance of the work undertaken on the SKA Project, SKA Contributors, who have generated Foreground IP may be requested to provide the SKAO with high level information about the nature and extent of their commercial exploitation, if any, of that Foreground IP outside the scope of the SKA Project. This requirement shall not extend to details of revenues or customers, but merely the applications to which the Foreground IP has been put.
- 3.2.12 For the avoidance of doubt, IP that was been created under the SKA Organisation IP policy and that has considered to be foreground intellectual property under that policy, shall be treated as Foreground IP under this Policy.

3.3 IP Register

- 3.3.1 SKAO shall create and maintain an IP Register for the following purposes:
- 3.3.2 To compile and maintain a full list of Background IP utilised in the design, manufacturing and operations of SKA Facilities, together with their licensing and sublicensing terms;
- 3.3.3 To record warranties confirming Background IP is free from encumbrances as to its use, and the indemnification of SKAO from any liabilities arising from infringement;
- 3.3.4 To curate notifications of Foreground IP in order to:
- 3.3.4.1 Compile and maintain a full list of Foreground IP utilised in the design, manufacturing and operations of SKA facilities;
- 3.3.4.2 Detect Foreground IP that is not registered and is registrable so that the SKAO can choose to exercise its rights to pursue registration;
- 3.3.4.3 To act as a high-level reference library of Foreground IP for the information of SKA Contributors who may wish to request further detail on particular IP entries to consider whether they wish to seek a license from the IP owner to use any particular IP for non-SKA Project purposes.
- 3.3.2 The entries in the IP Register shall not disclose the substance of the IP.



3.4 Amendment and Deviations

- 3.4.1 The SKAO Council may, by a two-thirds majority, amend this Policy.
- 3.4.2 Sections 3.2.5, 3.2.6 and 3.2.9 require unanimity of the Council to amend.
- 3.4.3 The SKAO Council may, by a two-thirds majority, agree a deviation from this Policy other than the clauses identified under section 4.2.2.

3.5 Dispute Resolution

- 3.5.1 Any dispute or claim arising out of or in connection with this Policy shall be settled amicably by negotiations between the parties to the dispute.
- 3.5.2 Any dispute or claim that cannot be settled amicably by negotiations between the parties to the dispute or by SKAO Council shall be referred to the Permanent Court of Arbitration under the relevant Arbitration Rules of the Permanent Court of Arbitration, unless the parties to the dispute have agreed to another mode of settlement.

3.6 General

- 3.6.1 Any revenues received by SKAO in the licensing of IP shall belong to SKAO and shall be utilised in terms of the approved budget.
- 3.6.2 Sub-licensing of IP shall be completed through a sub-licence agreement.
- 3.6.3 SKA Contributors shall employ their best efforts to ensure that they do not infringe any third-party IP and where applicable, shall conduct appropriate searches for such third-party rights. The SKA Contributor shall indemnify SKAO for any reasonable and mitigated costs incurred by SKAO should the SKA Contributor breach this clause.
- 3.6.4 SKA Contributors shall employ their best efforts to ensure that they do not infringe any third-party IP and where applicable, shall conduct appropriate searches for such third-party rights. The SKA Contributor shall indemnify SKAO for any reasonable and mitigated costs incurred by SKAO should the SKA Contributor breach this clause.
- 3.6.5 Owners of IP shall have the right to take action against any organisation that infringes their IP. Where SKAO sublicenses IP, the IP owner may request SKAO to take action if the sublicensee infringes the terms of the sublicense.



- 3.6.6 To the fullest extent possible, software Background IP and Foreground IP used for SKA Project purposes shall be provided on a permissive open-source basis, under the standard 3-clause BSD license¹ or any updated version of this license as advised by SKAO.
- 3.6.7 Where an SKA Contributor is expected to make their IP available to others under this Policy, such SKA Contributors are expected to license their IP directly, with SKAO using its right to sublicense under s3.1.4 and s3.2.6 only in exceptional circumstances.
- 3.6.8 The spirit and principles contained within this Policy are expected to apply to commercial contracts for the procurement of goods and services towards the SKA Project and will be applied via specific IP clauses contained within individual commercial contracts.
- 3.6.9 SKAO acknowledges that confidential information may be disclosed during collaborative research and other projects with SKA Contributors. In this case, SKAO shall impose confidentiality obligations through use of a non-disclosure agreement or confidentiality clause within another agreement, and in keeping with any SKAO policy concerning confidentiality.

4 Definition of Terms

4.1 Unless otherwise indicated, the capitalised terms in this Policy shall have the same meaning as in the Convention.

4.2 In this Policy, the following terms shall have the following meanings:

Background IP	IP owned by a SKA Contributor, which has not been created as a result of work done for the SKA Project.
Foreground IP	IP generated by a SKA Contributor or SKAO, pursuant to and in connection with the SKA Project.
Intellectual Property/IP	Artistic creations and industrial property which are capable of protection including, but not limited to, copyright, patents, trademarks, industrial design, technical data or expressions of knowledge or expertise which are capable of being licensed, but excluding data

¹ <https://opensource.org/licenses/BSD-3-Clause>



	taken through scientific observations with the SKA telescopes.
IP Register	The SKAO controlled repository of IP rights notifications.
Policy	This SKA Observatory Intellectual Property Policy.
SKA Contributor	An entity that provides funding or contributions to the SKA Project, or otherwise collaborates through scientific or technical activity with the SKA Observatory, on behalf of, or that is credited to, a Member or Associate Member.
SKA Facilities	The telescopes, associated infrastructure and buildings in Australia, South Africa and the United Kingdom which are under the control of SKA Observatory.
SKA Observatory/SKAO	The international governmental organisation established by Convention establishing the Square Kilometre Array Observatory, signed on 12 th March 2019.
SKA Organisation	The company limited by guarantee and incorporated in England and Wales under company number 07881918.
SKA Project	The global effort to design, build, operate, maintain and ultimately decommission the SKA Facilities.

5 List of Abbreviations

SKA.....	Square Kilometre Array
SKAO	SKA Observatory



POLICY APPROVAL AND OWNERSHIP DETAILS

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