

# ECLIPSE.ORG FOUNDATION, INC.

## MINUTES OF A MEETING OF THE BOARD OF DIRECTORS

(OCTOBER 21, 2019)

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A Meeting of the Board of Directors (the “*Board*”) of Eclipse.org Foundation, Inc., a Delaware corporation (the “*Corporation*”), was held as a regularly scheduled in-person meeting in Ludwigsburg, Germany.

Present at the meeting were the following Directors:

Present	Director	Organization
Y	Adam Gibson	Konduit
Y	Bryan Che	Huawei
Y	Chris Aniszczyk	Elected Committer Representative
Y	Dani Megert	Elected Committer Representative
Y	Dominik Scheiner	IOTA Foundation
Y	Ed Merks	Elected Committer Representative
Y	Etienne Juliot	OBEO
Y	Todd Papaioannou	Elected Sustaining Representative
Y	Gunnar Wagenknecht	Elected Sustaining Representative
Y	Jim Wright	Oracle
Y	Kenji Kazumura	Fujitsu
Y	Matthias Sohn	SAP SE
Y	Gorkem Ercan	Red Hat
Y	John Duimovich	IBM
Y	Ron Doyle	CA Technologies
N	Sebastien Girard	CEA List
Y	Stefan Ferber	Bosch
Y	Torkild Ulvøy Resheim	Elected Sustaining Representative

Present at the invitation of the Board was Mike Milinkovich, Executive Director, and Paul White, Secretary/Treasurer of Eclipse.org Foundation, Inc., as well as Mike DeNicola of Fujitsu and Steffen Evers of Bosch.

## GENERAL BUSINESS

### New Board Members

Mike welcomed to the Board three new Board members representing new Strategic members. He welcomed Adam Gibson of Konduit, Bryan Che of Huawei, and Dominik Schiener of IOTA Foundation. Mike explained that both Konduit and Huawei joined in the past week, and IOTA Foundation had joined earlier in 2019 but had chosen to delay taking their seat on the Board until now.

### Anti-Trust Policy

Mike Milinkovich reminded the Board of its obligations under the Foundation's anti-trust policies.

### Minutes

Mike Milinkovich introduced a discussion of the minutes of the September 25, 2019 Board Meeting, attached as Appendix A. With Adam Gibson, Bryan Che, and Dominik Schiener abstaining, the Board passed the following resolution:

RESOLVED, the Board approves the draft minutes of the September 25, 2019 Board Meeting as circulated and amended.

### Schedule of 2020 Board Meetings

Mike Milinkovich introduced a schedule of proposed dates and meeting locations for the Board's meetings in 2020. The Board discussed the possibility of scheduling the regular conference call meetings at times other than 11:00 Eastern to be fairer to the wide number of timezones in which the members work. Mike agreed to suggest alternate times for a subset of these calls for the year. The Board passed unanimously the following resolution:

RESOLVED, the Board approves the following schedule of regular meetings for 2020:

#### **Face-to-face meetings**

Tuesday, March 24, 2020     9:00am - 5:00pm EDT  
Location TBD (somewhere on the east coast of US)

Tuesday, June 16, 2020     9:00pm - 5:00pm EDT  
Wednesday, June 17, 2020   9:00am - 1:00pm EDT  
Location to be confirmed, but likely Ottawa, ON

Monday, October 19, 2020   8:30am - 5:00pm Central European Time

Ludwigsburg, Germany (in conjunction with EclipseCon Europe)

**Monthly Board calls (all calls are scheduled for 1 hour at 11:00-12:00 Eastern time, subject to the Executive Director proposing alternative times for a subset of these calls)**

Wednesday, January 15  
Wednesday, February 19  
Wednesday, April 15  
Wednesday, May 20  
Wednesday, July 15  
Wednesday, August 19  
Wednesday, September 16  
Wednesday, November 18  
Wednesday, December 16

### Topics & Issues Report

Mike Milinkovich stated the Q3-2019 Quarterly Report had been distributed to the Board, and welcomed questions about the report.

### New Strategic Members

Each of the three new Strategic members gave brief presentations to the Board regarding their motivation for joining the Foundation as Strategic members, and to highlight their objectives with respect to participating in the Foundation. The presentations are attached as Appendices C1-C3.

### Operation Update

Mike Milinkovich provided to the Board an update on the operations of the Foundation.

### Approval of revisions to the Intellectual Property Policy

Mike Milinkovich introduced a discussion of the proposed revisions to the Foundation's IP Policy, the related materials for which are attached as Appendix E1 & E2. Mike explained to the Board the proposed revisions had been distributed weeks earlier, and that the IP Advisory Committee had reviewed the proposed changes. With Jim Wright voting against, the Board passed the following resolution:

RESOLVED, the Board approves the revised Intellectual Property Policy as presented.

Jim Wright asked that it be noted that Oracle did not agree that the vote for this resolution be

based on a requirement of a super majority of Board members voting in favor, and instead that it ought to have required a unanimous vote in favor.

#### Approval of revisions to the Eclipse Code of Conduct

Chris Aniszczyk introduced a discussion of the proposed revisions to the Eclipse Code of Conduct, the related materials for which are attached as Appendix F. Chris noted the Code of Conduct is based directly on the original work done by the broad open source community and captured in the code of conduct as defined at contributor-covenant.org, and that they have recently updated the code. Mike reminded the Board the original code of conduct had been in place for approximately 5 years, and has been generally well received by the Eclipse community. Mike explained the Foundation's staff are explicitly excluded from the new version, as their conduct is governed under their employment contract and the company's policies. The Board unanimously passed the following resolution:

RESOLVED, the Board approves the revised Eclipse Code of Conduct as presented.

Mike agreed to publicize the updates to the code of conduct on the community bulletin.

#### Clarification of voting requirements for revisions to the IP Policy

John Duimovich asked to revisit Jim Wright's statement that Oracle believed the revisions to the IP Policy should have required a unanimous vote of the Board. John stated that IBM disagreed with Oracle's position, and that the vote rightfully required only super majority approval. John also asked Mike Milinkovich to confirm the Bylaws speak directly to the fact the IP Policy can be revised by such a super majority vote. Mike confirmed this is the case in both the current and proposed versions where Section 3.9(b) of the Bylaws explicitly contemplate that, while license exceptions require a unanimous vote of the Board, the clause clearly states the requirement for unanimity is subject to the exceptions set forth in the IP Policy which cover contributions that may not be licensable under the terms of the EPL, and the revisions to the IP Policy passed earlier in the meeting clearly fall into this category of exception. Mike further explained that the Foundation's general counsel had done an exhaustive review of this consideration, and came to the same conclusion.

Jim Wright stated he felt interpreting the Bylaws in this manner represents a change for the Board, and that the revisions to the IP Policy effectively swallow the value of the requirement for unanimity. Mike Milinkovich responded that he disagreed this represents a change in how the Bylaws have been interpreted, as the unanimous requirement for licensing decisions still exists in several cases. Mike further stated that the revisions to the IP Policy better serve the mission of the Foundation to become a big tent for more open source communities. Mike invited the Board to disagree with him, but no one other than Jim did so.

#### Membership Update

Mike Milinkovich updated the Board on the state of membership, the detailed report for which is attached as Appendix B2.

### Infrastructure Update

Mike Milinkovich updated the Board on the Foundation's activities relating to its infrastructure, the materials for which is attached as Appendix B3. Mike highlighted that the Foundation intended to end its use of CloudBees Jenkins Enterprise at the end of 2019, as the IT team has been able to successfully leverage the community version of OpenShift and the open source version of Jenkins OSS to enable migrating projects from CloudBees Jenkins Enterprise to a new JIRO service.

Mike further explained the initiative to introduce GitLab as a technology for hosting our projects, and to establish GitLab running on servers based in Europe. He stated this initiative is just getting underway, with the intention of being operational in 2020. Mike explained this now provides projects three options for hosting - GitLab, GitHub, or using the Foundation's forge, which is based in Canada. Mike stated that there are no immediate plans to stop using the forge, though he expects this may happen at some point in the future as it is a "dated" service, that he expects most projects will want to leverage more modern tools, and that it would represent a savings for the Foundation to terminate it. He noted that retaining the long history relating to projects will be one of the major considerations in any move to close the forge.

### Conferences Update

Paul White updated the Board on the Foundation's current and planned strategy relating to conferences and participation in tradeshow events. The Board expressed a strong desire to continue operating EclipseCon Europe, and to continue to have it serve as the "home for the Eclipse committer community". The Board was also receptive to the pursuit of a strategy of integrating and aligning Eclipse events as part of existing major conferences as a means to expose the Eclipse projects to these communities, and to align our activities to leverage our strong position in Europe.

Mike offered to create an ad hoc committee of the Board to enable further input from the Board on this topic, and for management to further refine its ongoing plans relating to conferences.

### Other Management Reports

Mike had provided updates on Projects, the Jakarta EE Working Group, and the IoT Working Group, but did not discuss them at the meeting, and the Board asked no questions about these reports. The reports are attached as Appendices B5-B7.

### Marketing Update

Thabang Mashologu, the Foundation's Vice President of Marketing, updated the Board on the Foundation's marketing activities and strategy, the related materials for which are attached as

## Appendix G.

### 2020 Program Plan

Mike Milinkovich presented a draft version of the 2020 Program Plan, prepared by the Foundation's leadership team, and based on the strategic objectives identified by the Board at the June 2019 Board meeting. Mike reminded the Board that the Program Plan identifies the potential activities of the Foundation in support of the strategic plan, but that the plan is then reviewed and approved by Finance Committee based on budget constraints. He also reminded the Board that the Board as a whole will then approve the Foundation's 2020 budget at the December 2019 Board meeting.

The Board focused on the aspect of the draft plan calling for the Foundation to leverage its strong position in Europe. Stefan Ferber raised the idea of redomiciling the Foundation to Europe as a means of enabling this. Mike explained that is one possible strategy, though he stated that while there are obvious benefits to doing so, there are also definite risks to doing so as it would require approaching each individual member to agree to such a change, which could result in a significant loss of membership. Mike stated that management would explore various means to enable such a pivot by updating or modifying our corporate structure and related governance documents. Mike also noted that any such reorganization would be intended to strengthen the Foundation.

The Board discussed adding diversification to Asia as an additional topic to be included in the Plan.

### Approval of revisions to Eclipse Bylaws

Mike Milinkovich introduced a discussion of the proposed revisions to the Foundation's Bylaws. Mike reminded the Board this topic has been discussed at multiple Board meetings, and that ad hoc meetings of the Board had been held to review the proposed redline. Mike explained approval would require a series of votes, as different sections of the Bylaws require different approvals.

The Board first considered all of the revisions as an entire package of changes, noting the exceptions that are required. Mike reminded the Board this resolution would require a super majority approval. With Jim Wright of Oracle voting against, the Board passed the following resolution:

RESOLVED, that subject to the following resolutions for Section 3.3(a), Section 3.3(b), and Section 3.9(b), which require additional approvals, the Board approves the revised Eclipse Bylaws as presented.

The Board then considered the proposed revisions specific to Section 3.9(b). Mike reminded the Board this resolution would require a unanimous decision. With all but Jim Wright voting in favor, and Jim Wright of Oracle voting against, the following resolution did not pass:

RESOLVED, that the Board unanimously approves revising Section 3.9(b) of the Bylaws to read as follows:

(b) Unanimous Consent Required. For actions (i) amending the terms of the Eclipse Public License (the “EPL”), and/or (ii) regarding the use of a contribution or distribution license other than the EPL (subject to the exceptions set forth in the Eclipse Foundation Intellectual Property Policy (“IP Policy”) which cover contributions that may not be licensable under the terms of the EPL), any such actions must be approved by all directors in Good Standing represented at a Board meeting at which a quorum is present.

The Strategic Developer Directors then considered the proposed revisions specific to Section 3.3(a). Mike explained that this section read on rights specific to this class of membership, and required a unanimous decision by those directors. The Strategic Developer Directors passed the following resolution:

RESOLVED, the Strategic Developer Members of the Eclipse Foundation unanimously approve revising Sections 3.3(a) of the Bylaws to read as follows:

Strategic Developers. Subject to the terms of Section 3.3(f) herein, each Strategic Developer Member (as defined in Section 6.2(a) below) shall be entitled to appoint one (1) representative to the Board (a “Strategic Developer Director”), provided, that, such representative must be an employee, officer, director, or consultant of the nominating Strategic Developer Member in order to be eligible to serve as a Strategic Developer Director. Upon the termination of the membership of a Strategic Developer Member pursuant to Section 6.17, any Strategic Developer Director nominated by such Strategic Developer Member shall be removed from the Board immediately therewith. The provisions of this Section 3.3(a) may not be amended without the unanimous consent of the Strategic Developer Members in addition to any and all other requirements including, but not limited to, the voting requirements of Sections 3.9 and 11.10, for amendment of these Bylaws set forth herein.

The Strategic Consumer Directors then considered the proposed revisions specific to Section 3.3(b). Mike explained that this section read on rights specific to this class of membership, and required a unanimous decision by those directors. The Strategic Consumer Directors passed the following resolution:

RESOLVED, the Strategic Consumer Members of the Eclipse Foundation unanimously approve revising Sections 3.3(b) of the Bylaws to read as follows:

Strategic Consumers. Subject to the terms of Section 3.3(f) herein, each Strategic Consumer Member (as defined in Section 6.2(a) below) shall be entitled to appoint one (1) representative to the Board (a “Strategic Consumer Director”),

provided, that, such representative must be an employee, officer, director, or consultant of the nominating Strategic Consumer Member in order to be eligible to serve as a Strategic Consumer Director. Upon the termination of the membership of a Strategic Consumer Member pursuant to Section 6.17, any Strategic Consumer Director nominated by such Strategic Consumer Member shall be removed from the Board immediately therewith. The provisions of this Section 3.3(b) may not be amended without the unanimous consent of the Strategic Consumer Members in addition to any and all other requirements including, but not limited to, the voting requirements of Sections 3.9 and 11.10, for amendment of these Bylaws set forth herein.

Finally, Mike explained that the package voted on as a whole in the first resolution included Section 3.9(c)(ii), which would conflict with Section 3.9(b) which was not approved. The Board unanimously passed the following resolution:

RESOLVED, that the Board approves the following revision to the Eclipse Bylaws:

“Section 3.9(c)(ii) RESERVED, “

The Bylaws as approved by these resolutions are attached as Appendix I.

Mike explained that before the Bylaws can take effect, they also needed to be approved by the Membership At-Large. He explained the voting process would begin the week of October 28, 2019, and will run through December 12, 2019. Mike reminded the Board that the largest block of voting members are Committer members, and he urged all Directors, but especially the Committer Directors, to encourage eligible committers to vote. Mike stated that he was hopeful we could achieve quorum for the vote in the time allotted, which is 50% of the eligible members, but that it is possible to extend the voting period if necessary.

### Export Compliance

Mike Milinkovich introduced a discussion of the topic of Export Compliance. Mike acknowledged this topic has become one of great importance to many of our members, as well as to the open source ecosystem at large, notably because of recent changes to US Export Compliance requirements. Mike also noted that this topic is complex and changing, and that we are actively working with our outside counsel to ensure the Foundation does adhere to all current export compliance requirements. Mike noted that, for example, we already do submit regular reports to US regulatory bodies dealing with the Entities List, which is a requirement. Mike stated that we will confirm with general counsel regarding whether the Eclipse contribution and membership agreements provide the Foundation with appropriate protections related to Export Compliance.

Mike explained that committers on projects which include encryption must note this fact when



they submit their CQs.

Executive Director Performance Review

Chris Aniszczyk led the Board's review of the Executive Director.

**Action Items:**

Mike Milinkovich agreed to propose alternate times for a subset of the Board calls in 2020.

Mike Milinkovich agreed to publicize the updates to the code of conduct on the community bulletin.

Mike offered to create an ad hoc committee of the Board to enable further input from the Board on the Foundation's ongoing conferences strategy.

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There being no further business to discuss, the meeting was adjourned.

This being a true and accurate record of the proceedings of this Meeting of the Board of Directors held on October 21, 2019, is attested to and signed by me below.

/s/ Paul White  
Secretary of Meeting