

ECLIPSE.ORG FOUNDATION, INC.

MINUTES OF A MEETING OF THE BOARD OF DIRECTORS

(MAY 20 & 26, 2020)

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 conference call.

Present at the meeting were the following Directors:

Present May 20	Present May 26	Director	Organization
Y	Y	Adam Gibson	Konduit
Y	Y	Bryan Che	Huawei
N	Y	Chris Aniszczyk	Elected Committer Representative
Y	Y	Dani Megert	Elected Committer Representative
Y	Y	Deborah Bryant	Red Hat
Y	Y	Ed Merks	Elected Committer Representative
Y	Y	Etienne Juliot	OBEO
Y	Y	Farah Papaioannou	Elected Sustaining Representative
Y	Y	Gunnar Wagenknecht	Elected Sustaining Representative
Y	Y	Jim Wright	Oracle
Y	Y	Kenji Kazumura	Fujitsu
Y	Y	Matthias Sohn	SAP SE
Y	N	Navin Ramachandran	IOTA Foundation
Y	Y	Pradeep Balachandran	IBM
N	Y	Robert Hilbrich	DLR
Y	N	Sebastien Girard	CEA List
Y	Y	Steffen Evers	Bosch
Y	Y	Tom Ritter	Fraunhofer FOKUS
Y	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.

GENERAL BUSINESS

May 20, 2020

Minutes

Mike Milinkovich introduced a discussion of the full and abridged minutes of the April 15, 2020 Board Meeting, attached as Appendix A. The Board unanimously passed the following resolution:

RESOLVED, the Board approves the draft full and abridged minutes of the April 15, 2020 Board Meeting as circulated.

Approval of Eclipse.org Foundation Officers to serve as Officers of Other Eclipse Foundation Entities

Mike Milinkovich explained that, as part of the implementation of the 2020 European Strategy and the creation of new corporations in Canada and Belgium, both he and Paul White would have to serve as officers of these two entities. The Board unanimously passed the following resolution:

WHEREAS, the Board of Directors (the “Board”) of the Eclipse.org Foundation (“Eclipse”) has duly approved a strategy for the establishment of non-profit open source organizations based in Belgium and Canada under the name “Eclipse Foundation” (the “International Strategy”);

WHEREAS, in furtherance of implementation of the International Strategy, the Board has determined that, in the interest of Eclipse, the Executive Director (the “ED”) of Eclipse and the Secretary/Treasurer (the “Secretary/Treasurer”) of the Board are needed to serve as the ED and Secretary/Treasurer of each of the Belgian and Canadian organizations while continuing to serve as the ED and Secretary/Treasurer of Eclipse;

RESOLVED, that following discussion and consideration by the Board, the Board has determined that the ED and Secretary/Treasurer of Eclipse are, authorized, directed and instructed to serve respectively as the ED and Secretary/Treasurer of each of the Belgian and Canadian organizations while continuing to serve as the ED and Secretary/Treasurer of Eclipse, in order to pursue, implement and execute the International Strategy on behalf of Eclipse.

Approval of the 2020 Annual Community Report

Mike Milinkovich introduced a discussion of the draft 2020 Annual Community Report, attached as Appendix B. The Board unanimously passed the following resolution:

RESOLVED, the Board approves the 2020 Annual Community Report as presented.

Mike noted the Foundation intends to produce a momentum press release to coincide with the publication of the report sometime in early June. The Board thanked Mike and the team, noting the quality of the work put into the report.

Approval of Revisions to the Eclipse Development Process

Mike Milinkovich introduced a proposal to revise the Eclipse Development Process (EDP), the related materials for which are attached as Appendix C. Mike indicated these changes bring the EDP in line with the changes made to the Eclipse Bylaws late last year. Mike noted the version circulated would be modified to reflect the date of approval of May 20. The Board unanimously passed the following resolution:

RESOLVED, the Board approves the Eclipse Development Process v1.9 as presented and amended.

Approval of the Eclipse Adoptium Top Level Project

Mike Milinkovich introduced a proposal to create the Eclipse Adoptium Top Level Project, the related materials for which are attached as Appendix D. He explained that the project is intended to be a “lift and shift” of the AdoptOpenJDK project.

Jim Wright stated the Board is already aware of the tension with the AdoptOpenJDK, and stated that AdoptOpenJDK is currently non-compliant with respect to its Java licensing. Jim also questioned why the Board would consider approving the proposed Eclipse project and take on the risk of a project which does not comply with the licensing regime established by Oracle’s Java Community Process when there are other open source Java runtime projects available to be used from sources such as Red Hat, Azul Systems, and Amazon’s Corretto.

When asked by Jim, Mike stated the Foundation would be open to discussing executing an OpenJDK Community TCK License Agreement (OCTLA) with Oracle, provided that the terms are acceptable. Jim also suggested that the project charter should be amended to prescribe that it would ship only TCK compliant binaries. Mike explained to the Board the OCTLA is a commercial and proprietary license to the Java SE TCKs.

When asked why this wasn’t an issue when EE4J was approved, Jim explained that this did not arise during the migration of Java EE as the plan was for the EE4J project to be the successor of Java EE, whereas the Adoptium project is not intended to be a successor to Java SE.

Jim made clear that while Oracle would be very supportive of the project should it be limited to shipping compliant binaries, he believes it would be a failure of duty for the Board to approve the charter as presented as it would be granting its approval of the Foundation distributing

non-compliant binaries. Jim stated that should the Board make this approval, Oracle would reserve all rights with respect to Oracle's perceived failure by the Board to comport with its duties, including Oracle's rights to enforce its patent rights, and that Oracle would further interpret the approval of the project as Oracle being expelled, and would therefore not remain as a member of the Foundation. Additionally Jim pointed out that both the Eclipse Foundation and several members represented on the Eclipse Foundation Board are participants in the Java Community Process, and would be repudiating the JCP if they voted to produce binaries that did not comport with its processes.

Mike explained that, while he had not explored with Oracle as yet, he believes the Foundation could negotiate with Oracle an arrangement to distribute Hotspot under a royalty free license, but that negotiating with Oracle to enable shipping builds based on OpenJ9 would likely require a commercial license with commercial terms, possibly including royalties.

The Board discussed the merits and costs of deferring a decision. Mike stated that he is scheduling a continuation of the Board meeting for May 26, as this topic as well as the other agenda items not yet addressed are time critical and must be dealt with.

Approval for all Eclipse projects to use Hibernate components distributed under the LGPL

Mike Milinkovich introduced a proposal to permit all Eclipse projects to use Hibernate components distributed under the LGPL, the related materials for which are attached as Appendix E. He noted that Hibernate is a very popular persistence framework for Java which implements the Java Persistence API. He noted both Eclipse OpenVSX and Eclipse Vorto have an immediate need to leverage the library indirectly through other third party content. The Board unanimously passed the following resolution:

RESOLVED, the Board approves the use of Hibernate components distributed under the LGPL by all Eclipse projects.

The meeting was adjourned for the day.

May 26, 2020

Update on 2020 European Strategy

Mike updated the Board on management's progress towards implementing the 2020 European Strategy approved at the March, 2020 Board meeting.

Mike informed the Board that Eclipse Foundation Canada was incorporated, effective May 21, 2020. Mike noted that the Board of the Canadian company will include himself, Paul White, and Gael Blondelle, as well as an external Board member, which is a requirement to meet certain tax requirements in Canada. Mike noted the tax implications of the relationship between the Canadian company and the US company is complex, but that he is confident all issues can be

resolved successfully.

Mike presented the Board with an update on the governance and membership plans. Mike reminded the Board this is a work in progress, and that work will continue on the details over the coming few weeks.

Mike highlighted a number of proposed differences between the current bylaws and the proposed bylaws for the new Belgian entity, noting that the two Strategic membership classes of Strategic Developer and Strategic Consumer will be combined into one Strategic member class, and that the Enterprise membership class will be eliminated completely. Mike made clear the scope of this change is to the classes described for the membership at-large, and there is no impact to the various classes of participation in working groups, in particular there is no change to the Enterprise membership level in working groups such as Jakarta EE.

Mike explained that management will be proposing changes to the Bylaws and Membership Agreement of the US organization, with the goal of providing drafts of the proposed changes to be discussed at the June Board meeting. When asked about the timing of such changes and whether it would be more effective to have members migrate to the Belgian organization immediately after it is incorporated, Mike explained that while many members will do so, there may be reasons why companies do not wish to make such a change that quickly. Mike further explained that while the intention is to strongly urge new members to join the Belgian entity, there will be no restrictions on new members joining the US entity, and indeed it would be inappropriate to impose such restrictions.

Mike noted that draft bylaws for the Belgian entity were expected to be made available within a few days, and would be distributed for review.

Update on Issues Related to the SimRel

Ed Merks gave the Board a brief update on the issues being addressed by the SimRel, and that he would distribute to the Board a more detailed report following the meeting.

Approval of the Eclipse Adoptium Top Level Project

The Board returned to the topic of approval of the Eclipse Adoptium Top Level Project. Mike Milinkovich noted that there had been discussion on the mailing list regarding the topic, notably that both Mike and Jim Wright had posted separate notes explaining the Foundation and Oracle's positions, respectively. Further, Mike noted that Pradeep Balachandran had offered that the project would consider revising its proposal, and that Pradeep had recommended the Board defer its decision until the project had time to do so. The Board agreed to revisit the topic at its next meeting in June.

Mike stated that he would begin discussions with Oracle to explore negotiating an OCTLA. Mike also stated for the interest of the Board that, as part of these discussions with Oracle, he intends to explore with Oracle having them execute the Jakarta EE Trademark license and to list

their WebLogic products as being Jakarta EE compatible.

Working Group Costing

Mike Milinkovich introduced a discussion of the costing model being adopted by management in relation to standing up and operating working groups. Mike noted that there are significant costs associated with standing up a working group, especially working groups that are generating open specifications, and that the intention is to engage with founding members of new working groups to ensure the Foundation can cover these costs. Mike reminded the Board that the proposed costing model does not include any specific program spend that the working group, but rather just the overhead of engaging with the Foundation.

Action Items:

Pradeep Balachandran agreed to work with the Eclipse AdoptOpenJDK project team to revise its project proposal and charter.

Mike Milinkovich agreed to engage with Oracle in potentially entering into an OCTLA.

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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 May 20 and May 26, 2020, is attested to and signed by me below.

/s/ Paul White
Secretary of Meeting