

# Client Alert

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## Who Would Offer a Free License to IP? Those Taking the Open COVID Pledge

“We ... pledge to make our intellectual property available free of charge for use in ending the COVID-19 pandemic and minimizing the impact of the disease.”

This is the [Open COVID Pledge](#), voluntarily undertaken by organizations—including companies, universities, and other intellectual property (IP) rights holders—who decide to grant temporary free access to their IP rights to help fight the COVID-19 pandemic.

Previously, [we wrote about](#) ways in which *the federal government* can alleviate the tension between valuable protections for IP rights and necessary protections for the public in the midst of a major, worldwide health crisis.

Now, some *IP rights holders themselves* are taking matters into their own hands in an effort to enable and encourage the rapid development of diagnostic testing, medical equipment, drug treatments, and vaccines that could save potentially millions of lives.

The Open COVID Pledge website indicates that the Steering Committee consists of a group of lawyers, scientists, entrepreneurs, and individuals committed to “the removal of obstacles” in using IP to combat COVID-19. They are urging IP rights holders to take the pledge and others to get involved more generally to assist in bringing a quicker end to the pandemic, and offering three ways to boost this effort:

First, an organization can “[Support](#)” the Open COVID Pledge. This is an expression of institutional support without any obligation. Second, an organization can “[Make the Pledge](#)”, in which it pledges its IP for this purpose. Third, an organization can grant a license of its IP, either on the terms of the suggested [Open COVID License](#) or its own terms that are at least as permissive as the Open COVID License.

Already, the pledge has received support and endorsements from several well-known companies, universities, and even a large law firm.

After making the pledge, organizations may implement it by providing a license to their IP. Open COVID Pledge provides a ready-made “Open COVID License” for those who desire to use it. In short, a “Pledgor” to the Open COVID License “grants to every person and entity that wishes to accept it, a non-exclusive, royalty-free, worldwide, fully paid-up license” to relevant IP rights “for the sole purpose of ending the ‘COVID-19 Pandemic’ ... and minimizing the impact of the disease ...” The license dates back to December 1, 2019, and remains in place “until one year after [the World Health Organization] declares the COVID-19 Pandemic to have ended.”<sup>1</sup>

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<sup>1</sup> While promoting the free use of IP rights, the Open COVID License also includes a defensive provision allowing a Pledgor to assert its licensed IP against a licensee to counter a threatened or filed infringement lawsuit with respect to activity related to the COVID-19 pandemic.

Open COVID Pledge acknowledges that for some, modifications may be required, and encourages organizations to adjust the license to meet the rules under which they operate.

We look forward to watching this space and are excited to see who takes the pledge, who takes advantage of this unprecedented access to IP, and the creative innovation that is certain to result. While the pledge may not be appropriate for all IP rights holders, it does offer—for those with the ability and impulse to contribute to a solution to the health and economic hardships caused by the COVID-19 pandemic—a means to do so.

More information is available at <https://opencovidpledge.org/>.

## Contacts

**Aimee N. Soucie**

asoucie@HuntonAK.com

**Lawrence K. DeMeo**

ldemeo@HuntonAK.com

**Andrew D. Kasnevich**

akasnevich@HuntonAK.com

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