



HH PARTNERS ATTORNEYS-AT-LAW

*Open source publishing in
business
- choosing licenses etc.*

22.9.2016

*Martin von Willebrand
@mvonwi*



Presenter

- MvW: Head of Technology, Partner, Attorney-at-law, at HH Partners
 - Chairman of COSS ry, Validos ry, Airo Island ry, Kolibre rf
- Business law firm, 11 lawyers
 - Technology : ICT procurement, outsourcing, r&d, licensing, IPR matters, litigation
 - Open Technologies: collaboration structures, open source, open data, open apis, open innovation

Contents

1. Open source ("OS") basics
2. Participation in open source projects
3. Open products as a strategy
4. Opening products
5. User's risk management perspective, GPL

OS Basics

- Open source, i.e. free software = software licensed with a license that allows free use, examination, modifying, copying and distribution without discrimination. May contain other terms.
- Software which use is subject to same rules of nature than any other software:
 - Good and bad
 - Widely used and little used
 - Projects/sw which live long /short
 - Suitable / not suitable
 - Secure / non secure
- Openness is a positive property



Gilles Gonthier, CC BY license

OS Basics

- What is open source?
 - Effective sw development methodology
 - Light-weight co-operation model
 - Lower costs and increased speed for proprietary development
 - Business opportunity
 - Sw with an open source license



Gilles Gonthier, CC BY license

OS Basics

- Linux, linux distributions, GNU/Linux, Linus Torvalds
- Apache, could mean Apache Software Foundation, Apache License (1, 1.1 and 2), Apache http server
- Copyleft i.e. reciprocity (NOT: viral effect, contagious, inheritance)
- Weak and strong copyleft / reciprocity
 - GPL, LGPL and Affero GPL (AGPL)
 - MPL
- Permissive license
 - BSD, MIT, Apache and many others
- OS, OSS, FOSS
- ASP, SaaS



Gilles Gonthier, CC BY license

Associations active in Finland

- COSS ry (coss.fi) – note calendar!
- Validos ry (validos.org)
- FSFE (fsfe.org) - Finnish chapter
- FUUG, FLUG, Linux aktivaattori
 - FUUG foundation's donations/support (2000-3000 euro), applications accepted continuously
- OKF, EFFi
- Open source projects/collaborations

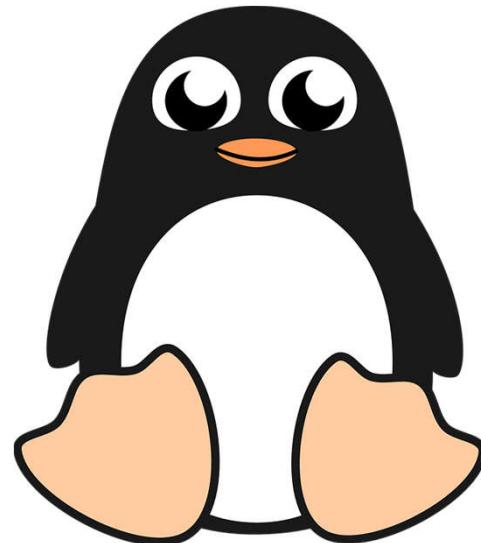
Licenses, classification

- MIT, BSD, Apache – simple to use (permissive)
- MPL 2.0 – simple, includes a simple copyleft (weak copyleft)
- LGPL – requires care and checking of the architecture (copyleft)
- Eclipse, GPL – requires care and checking of the architecture (strong copyleft)
 - GPL v3: patents, anti-DRM, anti-tivoization
- Affero GPL, EUPL yms. – requires care, not suitable always
 - Strong copyleft and SaaS terms
 - EUPL can be combined & changed to GPL v2
- <http://opensource.org/licenses/alphabetical>

Open source software in the enterprise

1. (Using open source)
 - “Others have put into open”
2. Contributing to open source projects
 - “We are opening our IPR”
 - “We need to follow the rules of the project”
3. Publishing
 - “Our strategy includes opening of products, maintaining projects”
 - “We create the rules of the project”

Participation in OSS projects



CC0

Linux is done by companies

- Linux kernel development update 2015
 - Majority of development work done in the kernel is paid by companies.
- Companies pay for more than 80 % of all contributions
 - The most important contributor group is "None", with 12,4 % of the total: people known to be doing the work alone, with no financial contribution by any company.
 - Rest is company sponsored, although there is a group of "Unknown" size 4,0 %
- Largest contributors (in order of size of contribution): Intel, Red Hat, Linaro, Samsung, IBM, Suse, Consultants, Texas Instruments, Vision Engraving Systems, Google, Renesas Electronics, Freescale, Free Electrons, FOSS outreach Program for Women, Oracle, AMD, Nvidia, Broadcom, Huawei Technologies, ARM, Pengutronix, Cisco, Qualcomm, Fujitsu, Linux Foundation

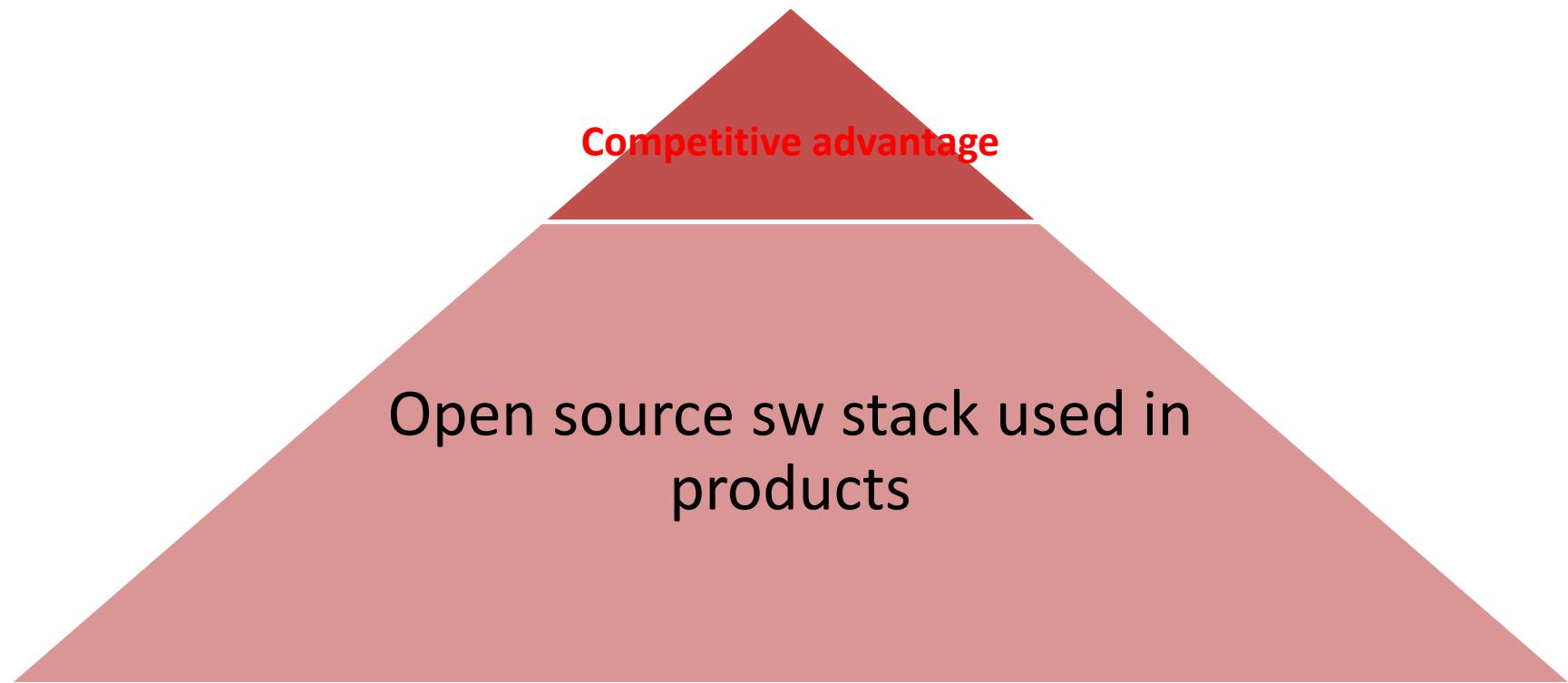
Participation in OSS projects

- Benefits in participating to projects
 - When next version of the company's product comes, less work in adapting the OSS
 - Company slowly gains access to projects that are central to its business → direction to projects given
 - Increased benefit from OSS community
 - Meaningful way of working for developers
 - Improved relation with OSS community → risk management perspective

Participation in OSS projects

- Drawbacks in participating to projects
 - Cannot 100 % control project
 - What can competitors see?
 - Collaborate in areas where there is no/little competitive advantage
 - Contributor license agreements etc.
 - Management, policy required

Area to collaborate v. competitive advantage



Software supplied to customers

One company looking at IoT:

- Bosch has said in a public slide that interconnections and interoperability is an overall goal for their business success; and right platform should be backed
- At least one open source major IoTS platform will emerge in 5 – 7 years (from late 2014)
- Bosch is not able to build a proprietary platfrom and customers would not accept it
- Bosch does not want any risk/dependency on third party proprietary platform
- Conclusion: Open Platform strategy with OSS
- Source: Bosch Software Innovations slide, Eclipse webinar 15/10/2014

Open products as a strategy

Vaadin.com example

- Vaadin.com gives away their work product for free to gain market share
- They saw a sharp increase in visitors at vaadin.com after the product was published as open source in 2009
 - Prior marketed as proprietary for 2001-2008
 - From less than 100.000 visitors to ~3M in three years
- Vaadin.com revenues climbed considerably, with a few years delay
 - From less than 2M (2009) to ~9M (2015)

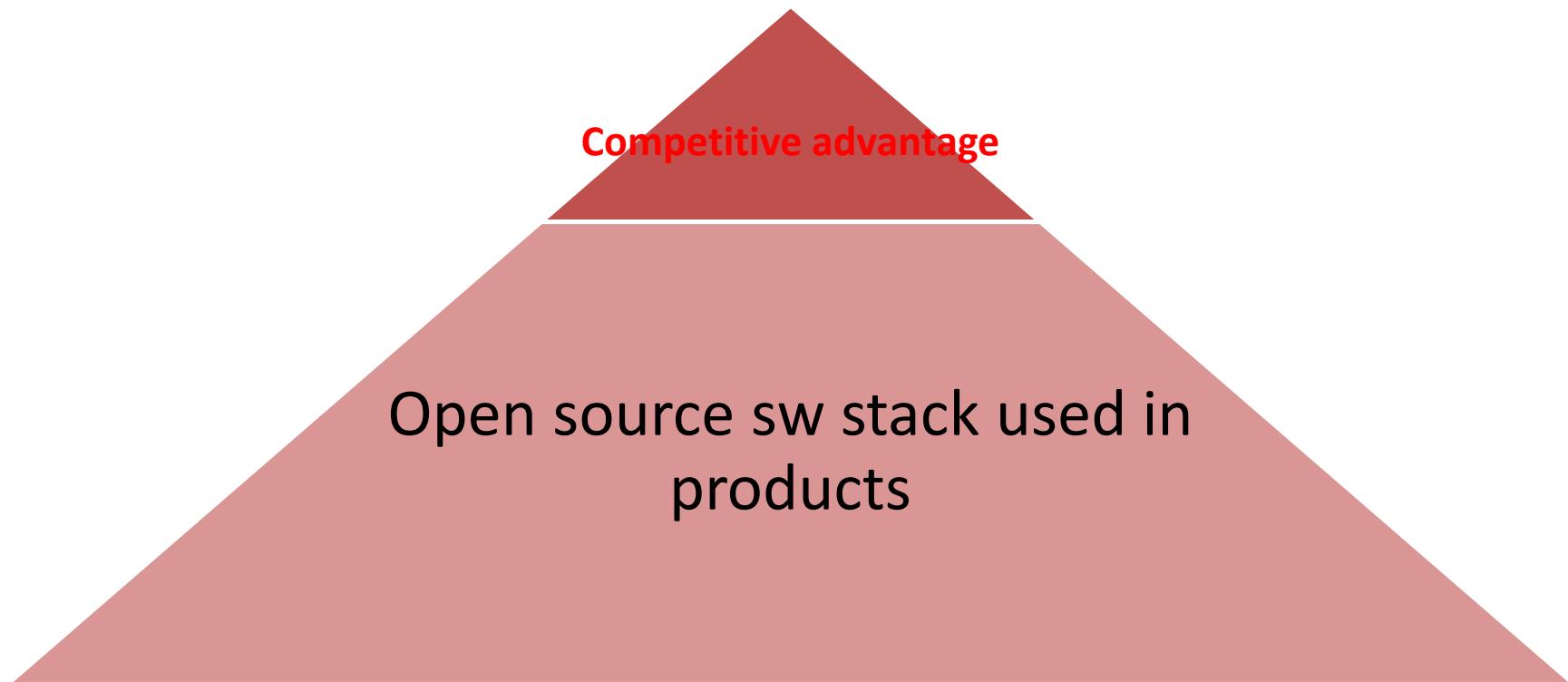
Vaadin.com

- Revenue streams
 - Pro tools (app-store type, third party tools)
 - Support
 - Training
 - Consultancy projects
- Vaadin framework fully open source
 - Also free, open source plug-ins

Open products strategy

- Gain users, gain revenue
- In order to increase market share
- Strategical controlling of/impact on the market
- Disrupt others

Area to collaborate v. competitive advantage



Offering to customers

Open products strategy

- Maximize copying and distribution where can be done without a scalable fee
 - Generates demand for other products and services
 - Creates brand, user community, ecosystem
- Monetize where copying is not possible
 - Some examples:
 - Brand store for community, helps scalable service sales
 - Data based business models
 - Traditional services: project and support work, ancillary sales

Opening products

Opening products – questions to solve

- Who will govern the project?
 - Organization, participation, costs
- Who will hold copyright?
- What outbound license will we choose?
- What contributor policy & inbound license will we choose?
- What (trade)mark, domain will be applied?
- (More: contracts, patents, trademark policies)
- (many of these questions are often forgotten)

Opening products – understanding

- Understand the user base
 - What are the use cases at customers?
- Understand the competition
 - How will competition react to an open product
 - Forking risk
 - Patent landscape
- Understand the competitive advantage sought
- How do we make money?
 - How fast do we need the revenue, what if?

Opening products – decision thoughts:

- If competition is unlikely to fork the project → could choose a permissive license, like MIT
 - If the project has a strong position, a lot of users, best development, natural monopoly etc.
 - Fear of unfair competition → more restrictive license
 - Patent concerns? Apache 2.0?
- If monetization is based on license difficulties (e.g. Affero GPL), and offering alternative licensing schemes, then has to be a difficult license
 - Sacrifices wide distribution, sacrifices value
 - Proprietary add-ons (open core etc.) have similar issues

Opening products – decision thoughts:

- If participation from competitors and others are sought, then a copyleft license may be useful, such as MPL 2.0, LGPL, GPL
 - MPL 2.0 is most user friendly, "clean" from a corp lawyer perspective
 - If deployment model is SaaS, then Afferro GPL or EUPL may be of interest.
 - However, participation is attracted best by a robust project "defining the ecosystem" ← every1 wants to participate

Opening products – decision thoughts:

- Often projects start with more restrictive licenses (GPL, LGPL) and after the projects are better established, they move towards more permissive licenses
 - Natural prudent way of action
- GPL is quite often still feared, and understood wrongly. From a project's perspective, must understand that such fears will come up from user base, if GPL is chosen.
 - Can be handled, requires communication

.....

Users' risk management perspective

GPL license in focus

OSS *Procurement and Use*

- OSS is excellent for companies as a part of their products and services
 - Project deliveries
 - Software products
 - Services over the Internet
 - (Development, other internal use)
 - Business models
- **Use has to be managed**
- OSS is nothing special
 - Different types of software / packages / components
 - Choosing between alternatives: Same criteria as with closed software
 - OS licensing model is a benefit



Lennysan, CC BY license

How to Take OSS Into Use?

- Information on used packages needs to be in the right place
- What processes are required?
 - Third party closed software is not taken into use without management (typically purchase process)
- Typically needed:
 - Validation:
 - General technical and legal review
 - Specific review in relation to the applicable business model
 - Decision

Users' Risk Management Perspective

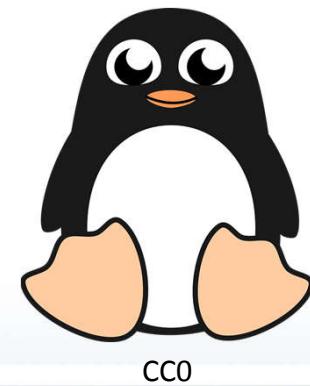
- Two ~legal risk types
 - Community risk, if non-compliant
 - Community includes: 1) customers, employees of customers, 2) rest of downstream, 3) own employees, subcontractors 4) OSS-developers etc.
 - If realises results in badwill ("bad" corporate citizen) and increased legal risk
 - Legal risk, if non-compliant
 - Right holder intervenes: extra work, changing product, recalling products, destroying products, costs, compensations
 - Publication of own source code is a choice of the company

How Users Manage Risks

- Community Risk: create, maintain and communicate a OS contact point for compliance matters; Develop a good working relationship with OS-community;
- Comply with terms for distribution – act correctly, respect the authors, be active
- Copyleft/reciprocity: create a sensible policy, and methods to address borderline cases
 - Take care of architecture questions (so called linking questions)
 - If needed, put requirements on the customer
 - Avoid being the distributor

Managing Risk, GPL v2

- A lot of misconceptions
- GPLv2 is NOT contagious, it contains reciprocity obligation (copyleft)
 - In order to distribute, must comply with reciprocity
 - No mechanism which would mean automatic licensing of a company's own code under GPL v2
 - This has not been claimed in any public court.
 - Section 2 (introduction and sub-clause b)
- GPL copyleft applies to distribution only (not e.g. use by yourself)
 - Does not apply to software as a service deliveries
- Copyleft term includes some ambiguity
 - Distribution of GPL v2 licensed software with proprietary sw
 - When does copyleft apply? (In order to distribute...)
 - Can be put to perspective and solved



Managing Risk, GPL v2

- Copyleft and architecture

Copyleft

- Code modifications
- Macro-extensions



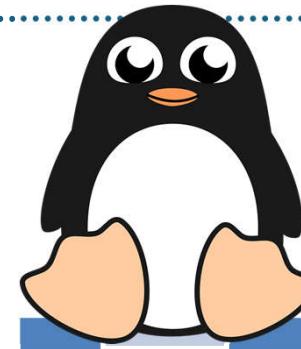
Policy decision

- Static linking
- Dynamic linking



Not within copyleft

- RPC
- Scripts launching different programs
- Separate processes in the same computer
- Joint database or disk



CC0

Risk Management Perspective

- Copyleft obligation, GPLv2, sec 2

"2. You may modify your copy or copies of the Program or any portion of it, thus forming a work based on the Program, and copy and distribute such modifications or work under the terms of Section 1 above, provided that you also meet all of these conditions:

- a) You must cause the modified files to carry prominent notices stating that you changed the files and the date of any change.
- b) You must cause any work that you distribute or publish, that in whole or in part contains or is derived from the Program or any part thereof, to be licensed as a whole at no charge to all third parties under the terms of this License.
- c) If the modified program normally...."



Thank you!

© 2016 Martin von Willebrand and HH Partners

Licensed under CC BY 4.0, unless otherwise stated.

HH Partners logo may be distributed with this presentation.

- Image source: jfraser, CC BY license