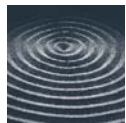


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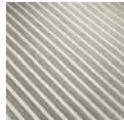
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Open Source: Risks and Benefits

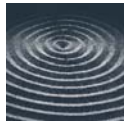
Anthony de Fazekas

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Open Source: Legal Considerations



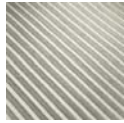
- The legal pitfalls of an Open Source framework as often MISUNDERSTOOD!



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Open Source: Legal Considerations



- Agenda



- Legal attributes of an Open Source license (high level)



- Understanding legal pitfalls by comparing proprietary and Open Source frameworks

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Legal Attributes of an Open Source License

- Contribution stage
 - Assignment e.g. to non-profit, or license
- Distribution stage
 - Requirement to distribute with source code
 - Product reasonably available for modification and use

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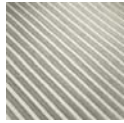
Legal Attributes of an Open Source License

- Hot button issues
 - Ability to incorporate OS code in later products?
 - Contribution of IP required, if related to contributed code?
 - Rules related to enforcement of users' IP rights
 - Legal effect of breach of open source license?
 - What is required to create a “separation” between OS code and other code that you want to control?

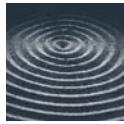
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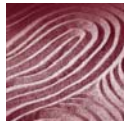
Proprietary vs. Commercial



- Not an obvious choice



- Answer is often “hybrid” solutions, with specific legal implications



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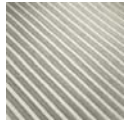
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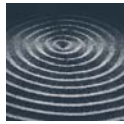
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Proprietary – The Bad



- More complicated licensing conditions (use restrictions etc.)
- Less flexibility to take aspects of deployment in house
- Artificial requirements for outdated approaches to delivery of functionality
- Too much emphasis on product vs. service

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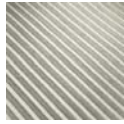
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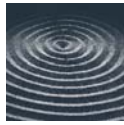
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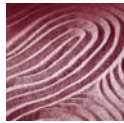
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Proprietary – The Good



- Patents help new entrants gain a foothold
- Proprietary product provides bargaining power = profit
- Reproduce some advantages of open source using cross-licensing and standard development
- Indemnities, especially IP



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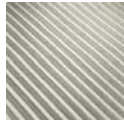
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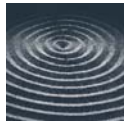
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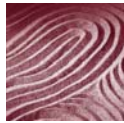
Open Source - The Good



- Framework for collaborative development



- Lower legal costs



- With current economic conditions, OS is very attractive
- Level of acceptance by companies is much better today

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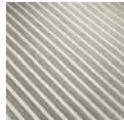
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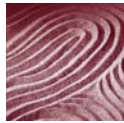
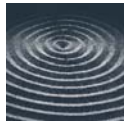
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Open Source - The Bad

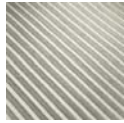


- Significant legal complexity to navigate
- Advantage of larger organizations in providing services
- Relatively small number of companies that are profitable based on OS strategy

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Reality: Legal Touchpoints

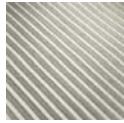


- Demarcation point between OS and proprietary components
- Ensuring that the code structure of proprietary components is consistent with the demarcation point
- Consider impact of license language on patent rights
- Consider impact of license language on enforceability (Jacobsen)
- Effects of non-asserts, between parties and unilateral (MICROSOFT)
- Need for OS adoption policies

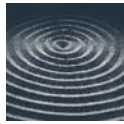
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Lessons



- OS framework is not a force field from IP issues!!!
- Need to have a specific market strategy leading to profit, and legal strategy that provides the necessary control, reservation of rights etc.
- Otherwise, you may live to regret going the OS route!!!
- Examine OS leaders closely

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