



2007 Open Source Think Tank:
The Future of Commercial Open Source
Executive Summary Report

**2007 Open Source Think Tank:
The Future of Commercial Open Source
*Executive Summary Report***

Table of Contents

INTRODUCTION.....	3
HOSTS.....	3
SPONSORS.....	3
ATTENDANCE	4
EVENT FORMAT.....	4
CONFERENCE AGENDA SUMMARY.....	4
KEYNOTE ADDRESS.....	5
CIO PANEL DISCUSSIONS.....	5
BRAINSTORMING SESSIONS.....	7
GPLV3 AND LEGAL ENVIRONMENT PRESENTATION BY MARK RADCLIFFE.....	12
MICROSOFT – NOVELL Q&A.....	13
CONCLUSIONS.....	14
SUMMARY.....	15
APPENDIX.....	16

Introduction

The [2nd Open Source Think Tank](#) was held on March 8-10, 2007, at the Silverado Resort in Napa, California. The purpose of the event was to provide a venue for thought leaders from key segments of the open source industry to collaboratively discuss, brainstorm and develop solutions to key issues in the growth and maturation of commercial open source. Topics discussed included business models, licensing and intellectual property issues, and adoption and usage models. The 100 attendees represented many sectors of the open source ecosystem including senior executives from large and small software vendors (both open source and proprietary), CIOs, venture capitalists, analysts and other industry experts.

The following is a synopsis of the event. It is not meant to represent the official company positions of any of the attendees but to be as accurate as possible summary of the many substantive discussions held over the three days. The authors of this document have been careful to keep personal opinions out, while faithfully recording the substance, facts and flavor of the event.

Hosts

The 2007 Open Source Think Tank was hosted by Olliance Group and DLA Piper.



[Olliance Group](#), is a leading open source business and strategy consulting firm whose mission is to help clients capitalize on the strategic, technological, and financial benefits of open source software. Olliance offers business and technology planning, risk management, marketing, investment advisory, and education consulting services. Through more than 120 engagements and our numerous industry partnerships, Olliance has gained valuable expertise and insight into the needs and challenges of our clients. Our knowledge and experience enables us to translate this insight into specific strategies and plans that significantly and positively impact our clients' growth and performance.



[DLA Piper](#), a leading global law firm with more than 3,200 lawyers in 24 countries and 63 offices. DLA Piper represents clients in every segment from large public companies to startups. DLA Piper assisted Sun in open sourcing the Solaris operating system, and clients include SugarCRM, Socialtext, Cleversafe, Hyperic and Funambol.

Sponsors

Olliance Group and DLA Piper would like to thank our event sponsors for their generous support to make this event possible. This year's sponsors were:

Platinum Sponsors



Gold Sponsors



Silver Sponsors



Attendance

102 individuals from 81 organizations attended the 2007 Open Source Think Tank. Attendees represented open source vendors, customers and end-users, open source communities and foundations, investors and financial analysts, market research firms and universities. Although the majority of participants were from the US, European, Asian and African organizations also participated.

The Think Tank was a “by invitation only” event limited to senior-level open source executives and experts. Total attendance was capped to ensure the event would fulfill its purpose to enable interaction, discussion and networking opportunities for industry leaders in a small group format. This year’s attendees included 32 chief executives and 16 CTO/CIOs.

Event Format

The event was structured to provide attendees an opportunity

- to share their knowledge and learn from other industry experts in small working groups,
- to develop a consensus or identify key areas of dispute in large group discussions,
- hear the “voice of the customer” during CIO panels, and
- build relationships in one-to-one meetings and group activities.

The working groups consisted of 10-11 participants representing a cross section of the industry and open source expertise. Each working group included a CEO from an open source company, a senior executive from a large software vendor, a finance or investment expert, a CIO, and a legal expert.

Conference Agenda Summary

The Think Tank consisted of two full days of activities and meetings, spread over Thursday evening, Friday all day, and Saturday morning. The schedule included:

- Opening and closing remarks by **Andrew Aitken**, Managing Partner of Olliance Group
- Keynote address by **Tony Perkins**, founder and editor of *Red Herring* and *AlwaysOn*
- **Brainstorming sessions** – four 1½ hour sessions on various discussion topics over two days
- Panel discussions – two **panel discussions featuring CIOs** from various organizations
- Legal Presentation by **Mark Radcliffe**, Partner at DLA Piper, on GPLv3 and other issues
- ‘Meetups’– six ½-hour, **one-on-one networking** sessions
- **Group networking** events and a wine reception held at the conclusion of each day

Keynote Address

Tony Perkins delivered the Think Tank's keynote address on Friday morning. Tony was the founder and editor of *Red Herring* magazine, and is a pioneering media entrepreneur and prominent opinion leader in the technology business and investment world. Tony is also the founder and editor of [AlwaysOn](#), an aggregator of user-generated content covering the media, technology, entertainment, and cleantech.

Tony's presentation focused on the current trends in media, the Internet, and blogging. Key takeaways from the keynote include:

- The cost of starting an Internet company plummeted by over 80% from 1996 to 2004. This trend was largely enabled by open source software and powerful, cheap hardware.
- IM is the preferred method of communication (with friends) for those under 25 by a wide margin and email is the preferred communication method for those over 25 by a significant percentage. This represents a major generation gap in communication modes.
- User generated content is vastly increasing in both supply and demand, driven by such popular online properties as MySpace, FaceBook, YouTube, blogs
 - Written content: 55M blogs today, up 800% in past year
 - Visual content: homemade videos, mashups
- Traditional media is losing authority with the younger generation, who are increasingly turning to "open" media for advice about music, products and services.
- Companies are following these trends
 - Adopting corporate blogs, especially by CEOs
 - "Always-connected" management
 - Rise of SaaS
 - Virtualization of workforce
 - Outsourcing
 - Mobility solutions

Tony's full slide presentation can be found at: <http://thinktank.olliancegroup.com/images/keynote.pdf>

CIO Panel Discussions

The Think Tank featured two CIO panel discussions. These panels were intended to give commercial customers of open source the opportunity to share their experience and perspective with open source vendors.

The panels featured:

Panel 1

Tim Golden, Senior VP of IT at Bank of America

Max Rayner, CIO of SurfControl

David Webb, CIO of Silicon Valley Bank

Panel 2

Sunny Azadeh, SVP IT and Agile Software

Cliff Bell, CIO of Infogain

Doug Harr, CIO of Ingres

Randy Terbush, CTO of ADP

Overall, the CIOs unanimously agreed that open source is viewed as a viable option in software procurement decisions for their companies. There is no hesitation by customers to include open source

in the consideration set alongside proprietary solutions as long as the functionality is truly comparable. This is a marked difference from their attitude at last year's Open Source Think Tank, when they were still hesitant to consider open source solutions. As Fabrizio Capobianco, CEO of Funambol remarked, "[What a difference a year makes](#)".

However, even though open source is now welcome in the CIO suite, it still faces significant hurdles to adoption. Like proprietary software, open source must:

- address a business need or solve a business problem
- meet the technical requirements of the organization – reliability, architecture, etc.
- be competitive in terms of TCO (more on this below)
- have commercial support options
- be a viable long-term solution, i.e. have one or more vendors and/or a strong community behind it

While customers have traditionally been able to negotiate license terms (such as indemnification) with proprietary vendors, they do not have that option with non-commercially supported open source. Because of this limitation, customers must perform a more thorough license review when considering an open source solution and employ adequate internal compliance policies and procedures to manage risks from open source licenses, especially the GPL.

The lack of commercially available support for some open source solutions continues to be a big barrier to adoption. Cliff Bell referred to the proverbial "throat to choke" that IT organizations require. Currently, the top 20-30 commercial open source vendors offer SLA-level support for their products, and third-party vendors such as [OpenLogic](#) are stepping into the void by offering SLA support and indemnification for many other open source components. However, numerous open source applications, components and libraries (that sit above the operating system layer and below the application layer) lack commercial support options. This is something the open source industry will have to address to increase adoption by companies.

Another significant barrier to adoption by customers is integration and interoperability. This includes the difficulty of integrating different open source applications and components into a working stack, as well as integrating open source into a company's existing (proprietary) stack. Doug Harr remarked that interoperability is the single biggest challenge for adopting open source at Ingres. While some vendors (SpikeSource) provide ready-made stacks, and others (OpenLogic) provide tools for customers to assemble their own stacks, CIOs desire greater interoperability built directly into open source products. This is an area where proprietary solutions maintain an advantage over open source, as it is far easier to integrate and use a suite of proprietary applications that are guaranteed to interoperate and that have common interfaces that make it easier for end-users to learn and use the suite.

Open source lacks compliance with many standards when compared with proprietary solutions. These standards include universal standards such as ISO, and industry-specific standards (financial industry standards, health care industry standards, etc.). It was acknowledged however, that open source offers some advantages in the area of technology standards through its openness and transparency and its ability to facilitate the creation of de facto standards such as Eclipse and ODF.

Advantages of open source software (OSS) include flexibility in procurement of software and support, as companies can acquire OSS from a variety of sources, and can often pay for support (where available) in a variety of ways, such as by subscription agreement instead of a large upfront perpetual license fee. Flexibility in deployment is another advantage, as companies can mix and match open source software as they please (deployment and customization of proprietary software is generally more restrictive due to license terms and lack of access to code).

Finally, faster product cycles are seen as a big advantage for open source – CIOs believe that product innovation is faster in open source than in proprietary software, and bug fixes are issued more quickly and frequently.

The lack of a license fee or a lower acquisition cost for open source is not seen as a major advantage for open source software. Sunny Azadeh commented that “there is no such thing as free—you have to pay for everything.” Costs for open source can occur through deployment and migration, technology training and cultural and organizational changes. However, in some cases, canny CIOs are using open source’s reduced acquisition costs as leverage in negotiations with proprietary vendors.

The ability for users to try open source before purchasing it is becoming less important for customers, as proprietary vendors have responded by offering trial versions and free versions of their software. However, CIOs did say that the ability for open source to spread virally could accelerate procurement and deployment - when engineers download, use and test open source, the IT organization does not need to conduct another round of testing before giving its approval. In addition, there is “perceived” value in the ability to fix or enhance open source code at the CIOs pleasure even if the vast majority of user organizations do not.

CIOs encouraged open source vendors to build strong channels by partnering with other companies that offer solutions and have established customer bases. They discouraged small startups from trying to establish enterprise sales models due to the high cost, difficulty, and time required. The CIOs agreed that some level of personal touch by commercial open source vendors is needed. Tim Golden from Bank of America stressed that those firms that help solve problems (i.e. are willing to be in meetings, answer questions, etc.) were most likely to get attention--in other words, don’t rely completely on the viral nature of open source to do all of your selling.

In summary, the CIOs emphasized that open source vendors must provide solutions that meet customer needs. The fact that a product is open source is not viewed as positive or negative, even though open source has advantages and disadvantages. Open source vendors must provide value to customers first and foremost—and support, interoperability, and integration are a big part of that value.

Brainstorming Sessions

The heart of the conference was the four, 1.5-hour brainstorming sessions. Each session commenced with the introduction of a discussion topic, after which the attendees broke into groups of 10-12 participants to brainstorm ideas and solutions. Each group’s task was to define the high-level question in more detail and develop a list of suggestions on how to address the challenges posed. The sessions concluded with a short presentation from each group to the entire conference. The goal of the brainstorming sessions was to identify areas of common concern, to discuss the depth or severity of those concerns, and to develop suggestions on how to address the issues identified.

This year’s brainstorming topics:

- Key trends and challenges facing open source, and their impact on ISVs and end-users
- The convergence of open source and proprietary models
- The need for an official definition, branding or certification of “open source”, and the role of independent organizations in providing these functions
- Licensing and other legal issues, in particular the GPLv3 and its effect on the industry

Brainstorming Session #1

“What are the four (4) key trends and challenges facing open source? Provide supporting rationale for each topic.

- How will these affect proprietary software vendors?
- How will these affect open source software vendors?
- How will these affect end users?
- At what point in time does open source become a ubiquitous part of the computing fabric?”

This topic gave Think Tank attendees the opportunity to take a high-level view of industry trends and dynamics. Unlike last year, there were very few predictions of world domination by open source, rather

an acceptance of open source's role as an important element of the computing environment – and participants spent most of their time identifying difficult issues and challenges.

Monetizing open source remains a key challenge for vendors small and large. For small vendors, the key challenge is creating enough value around “free” software to get customers to pay and then clearly communicating that value. For large (proprietary) vendors introducing open source, the challenge is showing enough commitment to open source to gain the trust of a community of developers and users as well as customers.

Another key challenge is balancing the needs of customers versus the interests of the developer community. Open source generally depends on a corps of motivated volunteer developers to develop features. Often, the features that developers are interested in working on are different then features that customers are requesting. For example, Openoffice customers want more Visual Basic macros to ensure interoperability with Microsoft Office, but OO developers have not been all that interested in building VB macros.

Open source licensing is a big source of confusion due to the number of open source licenses, and a lack of understanding on how licenses impact business, as well as how licenses interact with one another. Some licenses require technology to be shared with the community, other licenses require attribution, and numerous licenses have different ways of dealing with software patents. Furthermore, many licenses are incompatible. License proliferation, confusion and incompatibility are barriers to the continued growth and adoption of open source.

GPLv3 is a big concern for commercial users of open source. Ensuring that key GPL-licensed software such as Linux does not splinter into v2 and v3 camps is important for users, developers, and the entire open source community. (More on GPLv3 below in Brainstorming Session #2.)

A perceived lack of returns in software startups, due largely to the impact of open source, is reducing venture investment in the software space. The business model for open source needs to evolve and demonstrate sufficient returns and exit strategies to justify continued investment in new companies and technologies.

OSS tends to fragment easily, and the lack of standardization is a major burden for ISVs and customers. Currently, an ISV such as Adobe needs to test and adapt its software to run on 14 different Linux distributions. Commercial open source tends to be less fragmented, while “pure” open source tends to be more fragmented.

The number of core open source developers is not keeping pace with industry growth. This threatens the future growth of open source, as core committers to projects are the key drivers of product development. Additionally, there is a perception that companies are “buying” core committers through “hiring” (i.e. paying a salary to continue working on their open source projects) and other types of financial arrangements. The concern here is that these core contributors no longer have the entire community's best interests are heart, but rather, their employers.

Universities are increasingly graduating developers that are familiar with open source technologies and development methodologies. However a concern was expressed that due to the popularity of open source development at universities, graduates may be lacking key skills such as sound architecture, defining customer needs and product management.

Legal and operational risks remain significant barriers to OSS adoption. Although many companies are starting to put open source compliance programs in place, open source still poses significant and different risks from proprietary software. Continued risk mitigation by customers over the next few years will decrease the barriers to OSS adoption. OSS firms must also find ways to fit into customers' existing procurement processes, rather than being disruptive to these processes.

Finally, OSS and proprietary models continue to converge. Proprietary companies are taking elements of the open source model, including faster development cycles, and free, downloadable trial versions. OSS companies are taking elements of the proprietary model, by offering support, updates and indemnification. Even with this convergence, there will still be many competitive opportunities and threats between proprietary and OSS companies.

Brainstorming Session #2

What are the top three (3) issues related to open source licensing?

- How will they affect adoption of open source software?
- What will the effect of the GPLv3 have on open source?
 - How will users and suppliers deal with the fact that v2 and v3 are incompatible?
 - How will it impact integration with proprietary software?
 - Today the GPL represents more than 60% of all open source software. What will that % be in five (5) years?
 - How will software-as-a-service and hosting companies respond to GPL v3? (Google, Amazon, eBay)
- If you were starting an open source enterprise application software company today, what license would you choose and why?

This topic gave participants the opportunity to discuss open source licensing in depth. As expected, there were many concerns about licensing – both from vendors and customers. To paraphrase a Think Tank participant, “There are too many open source licenses, but not a single one adequately meets the needs of commercial open source vendors **and** customers”.

Some of the key issues discussed were:

There is an inherent tension between releasing one’s IP as open source, and making money from that IP. This is realized in the difficulty that many open source companies have in choosing the right license for their products. Most participants agreed that choosing a company’s business model is a prerequisite for choosing a license, because the different business models require specific license attributes to succeed. For example, a reciprocal license enables a dual-licensing business model, while a permissive license implies a company must sell add-ons, services or subscriptions to generate revenue.

Confusion over OSS license terms is a major issue, as ISVs and customers of open source do not fully understand license obligations. This is due to the large number of licenses and to the fact that many open source licenses were poorly or ambiguously drafted from a legal standpoint. Another contributing factor is that most open source licenses were written *before* open source became a significant *commercial* industry. All of this confusion makes some level of open source licensing compliance program necessary for any organization (vendor or user) that wishes to adopt open source.

The sheer number of OSI-approved licenses was not a major concern to most participants. While there were the usual complaints about license proliferation, and calls for OSI to consolidate licenses, most attendees did not seem overly concerned by the absolute number of licenses. This is partly due to the fact that only the most popular licenses (GPL/LGPL, MPL and derivatives, BSD, Eclipse) are perceived as realistic options for commercial companies that wish to release software into open source.

Incompatibility of licenses—specifically that software distributed under the GPL often cannot be used with software distributed under MPL, Eclipse or Apache licenses—was a serious concern for everyone. License incompatibility is an impediment to forming open source solution stacks. However, the group had no consensus around a potential solution to this difficult problem. Some suggested that the authors of each license should clarify points of compatibility and incompatibility with other licenses.

Think Tank participants bemoaned the lack of a business-friendly license that adequately addresses issues such as copyright, patents, attribution and indemnification. While nobody was suggesting “yet

another license” as the solution, the dissatisfaction by commercial vendors and customers with the existing licenses was clear.

Another issue that attendees raised was the lack of uniformity around how licenses deal with patents. According to Larry Rosen, 35 OSS licenses have a patent provision of some kind. The lack of strong patent protection and indemnification discourages companies from contributing more technology to open source. A participant gave the example of a large pharmaceutical company that wanted to contribute an Apache-based management tool, but its attorneys, fearing that someone could make a patent claim against the technology, prevented its release.

These licensing issues have led to higher-than-expected legal costs for open source vendors vs. proprietary vendors of comparable size. This was the case at Sleepycat, prior to its acquisition by Oracle, according to Michael Olson. These legal costs are not necessarily litigation-related—but involve getting regular and frequent legal reviews from attorneys.

These issues also point to the need for better governance of open source contributions. Currently, projects have many different standards governing code contributions – some communities vet the code, some require contribution agreements to be signed and others have no such requirements. The lack of standards and governance on contributions raises concerns on the source and legitimacy of code that is incorporated into projects.

Karen Copenhaver, an open source legal expert at Choate, pointed out that the level of patent litigation (as measured on litigation actions per number of patents) in the software sector is much higher than in other industries, including reputedly litigious industries such as pharmaceuticals and semiconductors.

GPLv3 (Draft 2) was a subject of much concern at the Think Tank. [Note: the Think Tank was held before GPLv3 Draft 3 was released, so many of the concerns expressed may be alleviated, or not, by the new draft.] Fears included the potential for a fork in Linux, with Linus Torvalds and the kernel group remaining in the GPLv2 camp, while the compiler group and others move to GPLv3. The anti-DRM provision was universally disliked, as it was viewed as social policy masquerading as a software license. Overall, participants generally felt that businesses would manage to reduce their exposure to GPLv3, mainly through policies restricting the procurement or use of GPLv3 software. This could have serious repercussions on the future of open source if many open source projects re-license their software under GPLv3, forcing customers to make hard decisions on whether or not they should continue using GPL software, including Linux.

Brainstorming Session #3

The question for the third brainstorming session was:

“Will every software company, independent of size or legacy, eventually implement a hybrid model - some mixture of open source and proprietary software? Why?”

- What are the three (3) key attributes of the most likely sustainable business models?
- Describe three (3) ways this will impact usage models?
- How will commercialization and “hybridization” impact the open source community?
- Will proprietary vendors move to open source faster than open source vendors mature to dominate industry segments? Why?”

This topic was a reprise of last year’s Think Tank, in which participants predicted that open source was well on its way to taking over the entire software business. This year, people were much more realistic in their assessments of the respective strengths and weaknesses of the open source and proprietary models.

Nearly everyone agreed that open source and proprietary models have already converged to some degree, with proprietary software adopting key aspects of open source, such as a more collaborative and lower-cost development models, faster development cycles, the use of collaborative tools such as mailing

lists, wikis, and IRC/IM, a philosophy of “post often and early”, more frequent version releases, bug patches and other fixes. Proprietary software developers have also been adopting marketing characteristics of open source, including free trial versions for customers and viral distribution models. Additionally, many proprietary companies (including Microsoft, Oracle, Adobe, etc.) are contributing technologies and products as open source, sharing source code with customers, and cultivating open source communities.

Open source has also adopted several aspects of the proprietary model, most notably the pursuit of profit. This includes generating meaningful revenue and profit from sale of licenses, support, subscriptions and professional services. Spurred by customer demand, open source companies are also taking pages from the proprietary model by building enterprise-level support organizations and even offering indemnification.

Most participants agreed that today, proprietary vendors retain advantages over many open source vendors. These include established business models, sales and support organizations, solid brands, established distribution and partner channels, and strong platform ecosystems (SAP Developer Network, MSDN, etc.). Additionally, mature proprietary companies have greater resources and capital, which gives them more time to react to changes in the marketplace. Most of these are due to the relative maturity and experience of proprietary vendors, however, rather than inherent advantages in the proprietary models. Several open source companies are well on their way to building these advantages.

Everyone agreed that most companies will implement hybrid models and take the best of both worlds. The benefits of the hybrid model include accelerating product development cycles, decreasing development costs, increasing customer trial and adoption, and lowering the cost of customer acquisition. The key drivers of the hybrid model will be delivering value to customers, and making profit – no different than any other business. Other drivers of the hybrid model include the rise of SaaS, and the acceleration of the subscription model vs. the traditional license model.

Finally, the subject of acquisitions of open source companies by proprietary companies was discussed - most people believe this trend will continue and even accelerate. Some argue that the greatest adoption of open source approaches by proprietary vendors will be through M&A. However, there will be inevitable tensions with the open source community as more commercialization and hybridization of open source occurs.

Brainstorming Session #4

“Today, more and more companies are claiming to be “open source” or supporting “open source”. To potential customers, it’s only getting more confusing.

- Should the commercial open source industry take responsibility and deliver consistent open source “brands” (e.g., “pure open source”, “open source-based”, etc...) to users via a brand or logo program?
- Who and how should open source “branding” be controlled?
- Is licensing the way to manage this? Is the OSI the appropriate governing body?
- What is the role of government?
- In three years what % of enterprise software will be open source? In ten years?”

This topic resulted in a spirited discussion about the meaning of open source, from its roots in the free software movement to its growing adoption by business. We discussed ideas on how to collectively manage the future of open source, from maximizing its commercial potential to keeping its soul.

There was general agreement that a new open source “brand” definition was **not** needed. People questioned if it was even possible to develop a brand definition that everyone could agree on, and even if they could, whether it could be enforced. CIOs had made it clear to everyone that commercial customers were not concerned about open source branding, only whether the solution provided real value. A comparison was made between the definitional challenges and enforceability of open source branding and that of ‘organic’ foods.

Several attendees noted that there is already an “official” definition of “open source.” The term “open source” simply means any software meeting the OSI definition and licensed under an OSI-approved license. This makes OSI the official “keeper” of the open source brand. However, many in the commercial open source world believe that their needs and concerns are not adequately represented on the OSI board.

Strong opinions were voiced against companies that call themselves “open source” by releasing a minimally-useful trial version under an open source license, or quasi-open source license—but operating a traditional proprietary software business. These companies simply use open source to upsell their proprietary products, do not release open source applications or make any contributions that are truly useful, and make no real effort to build and foster a community. There was a question on whether companies that had employees actively participating in open source communities but did not actually release any open source products should be called open source companies.

Most advocated letting the market decide how the term like “open source” is used (or abused). At the end of the day, customers will see beyond the branding. Additionally, as more proprietary companies adopt open source development and marketing practices, and as more open source projects and companies try to build business models, the term “open source” will become less important over time.

Some believe that how large and active a company’s community is can help determine whether a company is truly “open source” or not. However, others pointed out that some communities are more open than others, i.e. Linux vs. MySQL, so even defining what constitutes a “true” open source community is difficult.

Many people focused on education (instead of brand) as a better way to preserve the meaning of open source. More education was also seen as a way to reduce confusion about open source licenses.

There was unanimous agreement that government should stay out of defining the meaning of open source, but many participants were in favor of government IT policies that favor open source over proprietary software or at least require equal consideration of open source software with proprietary. The Europeans in attendance pointed out that government adoption of OSS in France, Germany and Asian countries has spurred the growth of local software industries and helped the adoption and credibility of open source overall.

There was general agreement that there is a need for a new industry forum on open source that includes software companies and customers. Many in the audience were in favor of such an organization, as they felt that the needs of companies were not adequately represented on existing open source industry organizations such as OSI, Linux Foundation, FSF, or the Apache or Eclipse Foundations.

GPLv3 and Legal Environment presentation by Mark Radcliffe

Mark Radcliffe, Senior Partner at DLA Piper and Co-Counsel for OSI, gave a presentation on GPLv3 and the legal environment around open source.

Mark described how virtually all financing and merger agreements being done today include a standard representation on open source. Mark also reviewed the GPLv2 from a legal perspective. The GPL has never been litigated to conclusion in a US court, but two court victories in Germany and a ruling in a US case imply that the license is legally enforceable. Key legal issues on v2 include the scope and definition of derivative works that also become subject to the terms of the GPL, as well as ambiguity on patents, the legal effect of FAQs, and the automatic termination of the license in case of a violation.

Mark spent the bulk of his presentation reviewing the current status of GPLv3, and the process of revision and review to date. He covered the most controversial provisions of GPLv3 Draft 2, namely the anti-DRM and patent provisions. He also discussed new provisions in Draft 3 intended to preclude future agreements similar to Novell-Microsoft (although that particular deal would be grandfathered into GPLv3).

These provisions include the requirement that a third party that accepts a conditional license or covenant not to sue would lose the right to distribute (targeting Novell), and the requirement that a third party that grants a patent license to one party would have to automatically extend that patent grant to all parties receiving the covered work (targeting Microsoft).

Another issue in the transition from GPLv2 to GPLv3 is incompatibility between the two versions. GPLv2 allows users to distribute under any version of the GPL, but v2 and v3 are essentially incompatible, therefore redistributing under v3 would essentially be a fork in the code.

Mark's description of the Novell-Microsoft agreement described the belief of some in the open source community that Microsoft's intention was to split the Linux community. This was disputed by Sam Ramji of Microsoft, who interjected and gave a clear explanation of the customer-driven motivations that drove the deal from the Microsoft side.

Finally, Mark described the OSI, its history and role in the open source community, as well some key issues facing the organization, chiefly the proliferation of non-approved licenses (primarily MPL-derivative licenses).

Microsoft – Novell Q&A

Due to the controversy around the Microsoft-Novell deal represented in Mark Radcliffe's presentation, the conference hosts gave Microsoft and Novell the opportunity to explain the agreement from their perspective. Microsoft was represented by Sam Ramji, Director of Open Source Technical Strategy, while Novell was represented by Justin Steinman, Director of Marketing Linux and Open Platforms.

From Microsoft's perspective, the deal it struck with Novell was driven mainly by customer demand. Sam described how its Interoperability Executive Council, which includes 30 top CIOs demanded interoperability between Windows and Linux, as both must coexist in the enterprise and neither will completely displace the other.

Sam described some of the technical benefits of the agreement, including directory identity federation, built on WS-Trust, WS-metadata exchanges, as well as the shared implementation of the open standard WS-Man as the common management protocol for Windows and SuSE, communicating via SML (service markup language).

Sam defended Microsoft from the accusation that its deal with Novell will lead to Microsoft suing other Linux distributors for patent infringement. Sam described Microsoft's patent portfolio as primarily defensive—at any given moment, Microsoft is the defendant in 25-35 patent lawsuits, and that Microsoft has offensively sued another party for patent infringement only *twice* in its history. Sam emphasized that Microsoft has robust patent licensing programs, and would much rather license its patents than sue.

From Novell's perspective, its motivation for the deal was primarily the need to differentiate itself in a meaningful way to gain share versus Red Hat. As number two in the market, Novell recognized that it simply could not gain significant share without a "game-changing" event. The ability for SuSE to interoperate well with Windows—including virtualizing Windows on SuSE Linux and vice versa with near native performance, offer better interoperability between OpenOffice and Microsoft Office through document translators, and share management standards between Windows and SuSE through the WS-Man protocol—is a very important benefit that will result from the agreement. The cross-licensing agreement that Novell signed with Microsoft, according to both Justin and Sam, was necessary as Novell required sanctioned access to Microsoft's code in order to develop open source interoperability without violating MSFT's IP.

Justin also characterized the deal as growing Linux adoption in general, as it believes it is adding new, formerly Microsoft-only accounts (such as Wal-Mart) and not just capturing Red Hat accounts—he claimed that SuSE added over 40,000 new subscriptions through Microsoft in the last quarter.

Justin addressed accusations that the community was unaware of the terms of the deal, describing how Novell consulted numerous open source leaders before signing the deal, including leaders of Mono, Gnome, Samba, and Linux. He said that these leaders had significant opportunity to provide useful and meaningful feedback on the deal to Novell and few chose to do so.

Conclusions

Differences between this year's discussions and last year's discussions

This year's Think Tank focused on the operational realities of building an open source-based business, and discussions focused largely on how open source companies can provide value for customers, and on the shortcomings of many open source companies in addressing their commercial customers' requirements. Last year, discussions focused on how open source would take over the software business, and how proprietary companies would have to adapt, embrace or be swept away by the open source wave. Put another way, this year's Think Tank was much more realistic and pragmatic.

CIO Panels

The key conclusions from the CIO panels were: 1) open source software is rapidly becoming accepted by customers as a viable alternative to proprietary software, and 2) open source vendors must provide *solutions* that meet customer needs. Open source vendors may have good products or technology, but good technologies are not, in and of themselves, solutions. Solutions must include support, interoperability, and integration.

Areas of Consensus

- Open source and proprietary software models are converging, and virtually all proprietary software companies will adopt key elements of the open source model, including collaborative development, and the building of viral distribution channels.
- A new open source branding or certification is not needed, beyond the established OSI definition and approved licenses.
- There are too many OSI-approved licenses, and much confusion over license terms in the most popular licenses.
- There needs to be a new OSI-approved open source license that better meets the needs of commercial open source vendors and commercial customers than existing licenses.
- There is a need for a new industry body where the concerns and requirements of commercial open source vendors and customers are represented. Existing organizations such as the Linux Foundation and OSI do not yet meet this need.

Areas of Disagreement

- GPLv3 (draft 2) is accepted by some but disliked by most. Many open source companies and customers had very strong negative opinions about GPLv3 (draft 2), and will manage their organizations to reduce their exposure to GPLv3.
- The Microsoft-Novell deal remains controversial. While San Ramji and Justin Steinman did a good job explaining some of the reasons for the deal, some in the open source community remain skeptical.
- The future of open source vendors is uncertain. Some were very bullish on open source vendors, but others noted the relatively small number of "successful" open source companies and that most of them were started and funded many years ago. There was also disagreement on what would happen to open source if the economic cycle turned and companies cut back spending on IT. Would open source accelerate due to lower licensing costs, or would it stagnate as companies revert to tried-and-true solutions?
- Is open source good or bad for the software industry in the long run? Many cited the open source development model as the future of software development, producing better software faster. However, the difficulty in building strong open source business models could jeopardize the future as venture and other investment capital is redeployed, away from software startups.

Summary

The 2007 Open Source Think Tank covered a host of real-world business issues facing the open source community. The focus was on commercial producers and users of open source, which influenced the agenda, discussions and key takeaways. A very interesting observation by a European participant was that in Europe, open source is driven by the community, in the US, it's driven by commercial companies, and in Asia, open source is driven by governments.

Open source is thriving and growing, as evidenced by the increasing number of companies participating in the Think Tank. Open source has moved beyond idealistic predictions of world domination and into the realm of solving hard business problems. The key issues raised in the Think Tank include monetizing open source, confusion and incompatibility around licensing, the need for enterprise-level integration and support, and the need for an industry forum that represents the interest of commercial open source vendors and customers.

Olliance Group and DLA Piper thank everyone who attended the conference for their participation, ideas and commitment, and offer a special thanks to all the sponsors of this year's conference. We look forward to seeing you at next year's Open Source Think Tank!

Appendix

2007 Think Tank Attendees – Organizations Represented

Adapttec	eZ Systems	Olliance Group
Adaptive Planning	Funambol	OpenITWorks
Adobe	HelmitTechnologies	OpenLogic
ADP	HP	Oracle
Agile Software	Hyperic	O'Reilly
Alliance Capital	IBM	Partech
Avidence	IBM	PushToTest
Bank of America	Infogain	Rosenlaw & Einschlag
Bitrock	Ingres Corporation	rSmart
Black Duck Software	Innoopract	Rustic Canyon
Carnegie Mellon	Intalio	SAP
Choate, Hall & Stewart	Intel	Sendmail
Cignex	Iona	Silicon Valley Bank
Citigroup	Iterating, Inc.	SourceSense
Cleversafe	ITGroundwork	SpikeSource
Collabnet	JamWarehouse	SugarCRM
Collaborative Software Initiative	JasperSoft, Inc.	Sun
Compiere, Inc.	Laszlo Systems	SurfControl
Continuent	Microsoft	Talend
Covalent	Mulesource	Terracotta
db4Objects	MySQL	The 451 Group
DLA Piper	National Open Centre	Trolltech
Doll Capital Management	NEC	U of California
eBay	NEC Corporation of America	U of Georgia
Eclipse	North Bridge Venture Partners	Unisys
EDS	Novell	Zenoss
EnterpriseDB	Ohloh	Zimbra