From A to Veeck:
Standardization and the Law

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OPEN SOURCE SOFTWARE
(WHAT'S *THAT* ALL ABOUT?)

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Open Source - What it is:

■ A *development model*:

- Anyone can participate
- Meritocracy

■ A *licensing model*:

- Any one can use the code; and
- They don't have to pay anything; but
- They do accept certain restrictions; and
- Those restrictions apply "All the way down" (more later on this)

Open Source - What it is:

- An *End-user friendly product*:
  - You can have the source code
  - You can change the source code
  - You can keep your changes proprietary, as long as you don't sell them
  - You can make suggestions to the open source project for future features
  - You can have your engineers participate in the project
  - You don't have to worry (as much) about abandonment, because you have the source code

Open Source - What it is:

And it's increasingly dependent on open standards

(more on this later)

Open Source - What it isn't:

- Totally free to own use
  - Most vendors still want to buy support
  - When new versions come out, you get them for free, but you still have your internal and external costs to bring them on line and train your people
  - You may also want related products and services that you buy under normal licensing terms
  - Moral: calculate "total cost of ownership"

Open Source - What it isn't:

- Monolithic
  - Open source projects cover a broad spectrum
  - At one end: SourceForge, with thousands of projects
    - Your CIO may go there for a widget
    - Projects may be long term, or may disappear
  - At the other end: Linux
    - Open Source Development Lab
    - Free Standards Group
    - Debian Core Consortium

Open Source - What it isn't:

- **Static:** It's still very much an evolving situation as regards licensing, development and staffing
- **History:**
  - Began with one license, inspired by Richard Stallman
  - Definition is maintained by the Open Source Initiative (OSI): http://www.opensource.org/
  - Now there are more than 50 approved licenses (and an effort to consolidate is underway)
  - For a list of licenses – and of who is using which license - see:http://www.opensourcelegal.org/licensedb/

What Happens Next?

- Future:
  - Further consolidation of licenses
  - Further evolution and formalization of process and participation in projects involving core software (e.g., Linux, FireFox, Eclipse, etc.)
  - Tension between developer community and vendors?
  - Balkanization of Linux and other core products?
  - Clash with Open Standards?
  - Politicization (e.g., Red Flag)?
  - Open Hardware? Open genetics? Open ___?

Open Source v. Open Standards

- More on the licensing model: the "Open Standards Principles:"

1. " Licensees are <u>free to use open source software</u> for any purpose whatsoever.

2. Licensees are <u>free</u> to make copies of open source software and <u>to distribute</u> them <u>without</u> payment of <u>royalties</u> to a licensor.

3. Licensees are <u>free to create derivative works</u> of open source software and to distribute them without payment of royalties to a licensor."

Open Source v. Open Standards

4. Licensees are <u>free to access and use the source code</u> of open source software.

5. Licensees are <u>free to combine</u> open source and other software "

    L. Rosen, former General Counsel for the Open Source Initiative

As a result:

- No restrictions on use
- No restrictions on transfer
- No fees of any sort

Open Source v. Open Standards

- What happens when:
  - An open source product needs to incorporate a standard developed by an SSO that permits RAND?
  - An SSO with a traditional IPR policy wants to develop standards that it wants to be supported by open source software?
  - An SSO with a traditional IPR policy wants to host an open source project itself?
- See the W3C and OASIS for two answers

Open Source v. Open Standards

- A Cultural Divide:
  - ANSI Type participants:
    - Some market sectors have been historically tolerant of royalties
    - Some vendors participate hoping to get royalties
    - "Open Source isn't a standard"
  - Open Source Advocates:
    - Revolutionary zeal
    - Our way or the highway

A Quick note on SSO Economic Models

- Some rumblings about standards costs (e.g., aerospace)
- Some rumblings about monopolistic pricing of standards (sole source)
- Virtually all consortia give standards away (they want to encourage adoption)
- Open Source projects not only give the specification away, they give the product away
- Increasing expectations of free use
- Should standards sales subsidize non-standards activities?

For Further Information:

- Open Source v. Open Standards

    http://www.consortiuminfo.org/bulletins/mar05.php#trends

- Massachusetts and OpenDocument: A Brave New World?

    http://www.consortiuminfo.org/bulletins/sep05.php#feature

- News Portal: Open Source/Open Standards

    http://www.consortiuminfo.org/news/cat.php?CID=27

- OpenSourceLegal.org

    http://www.opensourcelegal.org

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