

Leveraging Open Source Software

In Your Business Model



Holme Roberts & Owen LLP
Attorneys at Law



Copyright 2006 Holme, Roberts & Owen LLP

Denver Boulder Colorado Springs London Los Angeles Munich Salt Lake City San Francisco



Introductions



Holme Roberts & Owen LLP
Attorneys at Law

Jason Haislmaier

Partner - Holme Roberts & Owen LLP
jason.haislmaier@hro.com



Stormy Peters

Director, Product Management – OpenLogic, Inc.
stormy.peters@openlogic.com



Julie DeCecco

Asst. General Counsel – Sun Microsystems, Inc.
julie.dececco@sun.com



What is OSS?

Open Source Software



What is OSS?

What is it?



What is OSS?

**“Open Source” Software is
Just Software**



What is OSS?

**OSS Licensing
is What Makes the
Software “Open Source”**



What is OSS?

OSS Licensing

- Like proprietary licenses, OSS licenses have limits
- Unlike proprietary licenses, these limits allow for more “open” or “free” use of the software
- The “Open Source Definition” (OSD) sets criteria for OSS licenses
 - Availability of source code
 - Right of redistribution
 - Right to modify
 - Nondiscriminatory terms
 - Self-perpetuating license
- Licenses are certified by the Open Source Initiative (OSI) as compliant with the OSD





What is OSS?

OSS Licensing

- More than just the GPL
- >50 licenses certified by the OSI
- Many more uncertified
- Most common: GPL, LGPL, BSD, MIT, Apache
- All seek to achieve common goals
- Each has its own (very) distinct set of terms

Open Source Initiative OSI - Licensing

Address: <http://www.opensource.org/licenses/>

License Index ..

- [License Approval Process](#)
- [License Information](#)
- [*Academic Free License](#)
- [*Apache Software License](#)
- [*Apache License, 2.0](#)
- [*Apple Public Source License](#)
- [*Artistic license](#)
- [*Attribution Assurance Licenses](#)
- [*BSD license](#)
- [*Common Public License](#)
- [*CUIA Office Public License Version 1.0](#)
- [*EU DataGrid Software License](#)
- [*Eclipse Public License](#)
- [*Eiffel Forum License](#)
- [*Eiffel Forum License V2.0](#)
- [*Entessa Public License](#)
- [*Fair License](#)
- [*Framework License](#)
- [*GNU General Public License \(GPL\)](#)
- [*GNU Library or "Lesser" General Public License \(LGPL\)](#)
- [*Lucent Public License \(PlanQ\)](#)
- [*Lucent Public License Version 1.02](#)
- [*IBM Public License](#)
- [*Intel Open Source License](#)
- [*Historical Permission Notice and Disclaimer](#)
- [*Jabber Open Source License](#)
- [*MIT license](#)
- [*MITRE Collaborative Virtual Workspace License \(CVW License\)](#)
- [*Motosoto License](#)
- [*Mozilla Public License 1.0 \(MPL\)](#)
- [*Mozilla Public License 1.1 \(MPL\)](#)
- [*NASA Open Source Agreement 1.3](#)
- [*Namen Public License](#)
- [*Nethack General Public License](#)
- [*Nokia Open Source License](#)
- [*OCLC Research Public License 2.0](#)
- [*Open Group Test Suite License](#)
- [*Open Software License](#)
- [*EHP License](#)
- [*Python license \(CNRI Python License\)](#)
- [*Python Software Foundation License](#)
- [*Qt Public License \(OPL\)](#)
- [*RealNetworks Public Source License V1.0](#)
- [*Reciprocal Public License](#)
- [*Roch Source Code Public License](#)
- [*Sleepycat License](#)
- [*Sun Industry Standards Source License \(SISSL\)](#)
- [*Sun Public License](#)
- [*Sybase Open Watcom Public License 1.0](#)
- [*University of Illinois/NCSA Open Source License](#)
- [*Tovija Software License v. 1.0](#)
- [*W3C License](#)
- [*wxWindows Library License](#)
- [*X.Net License](#)
- [*Zope Public License](#)
- [*zlib/libpng license](#)

The Approved Licenses

For your convenience, we have collected here copies of the licenses approved by OSI. If you distribute your software under one of these licenses, you are permitted to say that your software is "OSI Certified Open Source Software."

The "classic" licenses, GPL, LGPL, BSD, and MIT, were the most commonly used for open-source software before the Mozilla release in early 1998. The Mozilla Public License has since become widely used. Many other licenses have been submitted for review and approval by OSI. As you can see, the list of approved licenses is growing.

If you can, use one of the already-approved licenses for distributing your software. But be sure that you read and understand the license terms completely. We encourage you to select a license that is consistent with your business model. And consult with your own attorney, because OSI does not provide legal advice.

License Versions and Translations

The official versions of these licenses are the ones published on the OSI website. Translations of these licenses into other languages may be available but those translations are not official or legally binding.

Email concerning licensing

OSI has also established a mailing list to review licenses submitted to license-approval@opensource.org. To subscribe, send mail to license-discuss-subscribe@opensource.org. Unsubscribes go to license-discuss-unsubscribe@opensource.org. The usual -request address works as well. This list is archived [here](#).

There is also an "announcement list". To receive notice of OSI actions, e.g. approving licenses, position papers, etc. send an email to announcements-subscribe@opensource.org. To subscribe a group address send a msg like so: announcements-subscribe-news@news.com at opensource.org. **Subscribing to the announcements list is highly recommended.**

Copyright © 2004 by the [Open Source Initiative](#).
Technical questions about the website go to Steve M.: webmaster@opensource.org / **Policy questions** about open source go to the [Board of Directors](#).

The contents of this website are licensed under the [Open Software License 2.1](#) or [Academic Free License 2.1](#)

OSI is a registered non-profit with 501(c)(3) status. [Contact](#) our [Board](#) for further donation information.



Costs of OSS

Using OSS is
Not Free

Using OSS
Has a Cost



Costs of OSS

Compliance

Management



Costs of OSS

Noncompliance

Mismanagement



Costs of OSS

Management

**License
Compliance**

**Supporting
the Community**

**Leveraging OSS in your
business model has costs?**

**Legal
Costs**

**Organizational and
Practical Costs**

**Intellectual Property
Risk**



Benefits of OSS

Leverage
“the community”

Reliability/
Security

Development
Time

Time to
market

Functionality

Why do it?

Responsiveness

Independence

Image



Benefits of OSS

Reduce Costs

Increase Revenue



Benefits of OSS

R&D?



Benefits of OSS

OSS community **delivers some gains
in core application development**

**Greater leverage comes from
testing, bug fixes, and code integration**



Benefits of OSS

Sales and Marketing?



Benefits of OSS

In 2005, Goldman Sachs estimated that software companies spent **82% of new license revenue** on marketing and sales efforts



Benefits of OSS

**“OSS turns [the software]
marketing problem on its head”**

Larry Augustin

Chairman,  VA SOFTWARE



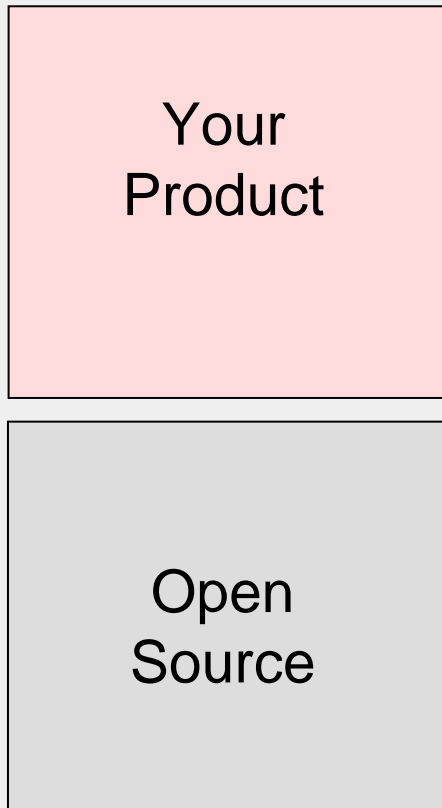
Benefits of OSS

**... What *are* companies doing
to leverage OSS?**



OSS Business Models

Building on OSS

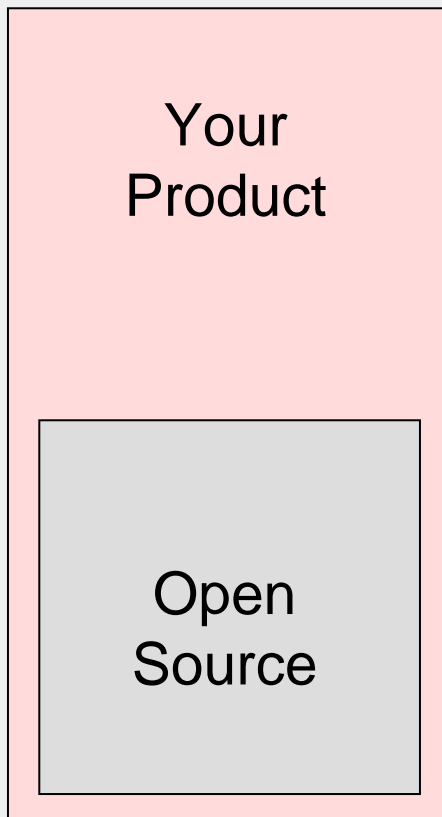


- Building software on an OSS platform
 - Lower-cost
 - Horizontal and vertical scaling
- Platforms
 - Linux
 - Solaris
 - LAMP, CGL
 - Samba, NFS, JBOSS, Apache, Tomcat
 - GIMP, LTSP
 - Asterisk
 - and on and on. . .



OSS Business Models

Building with OSS

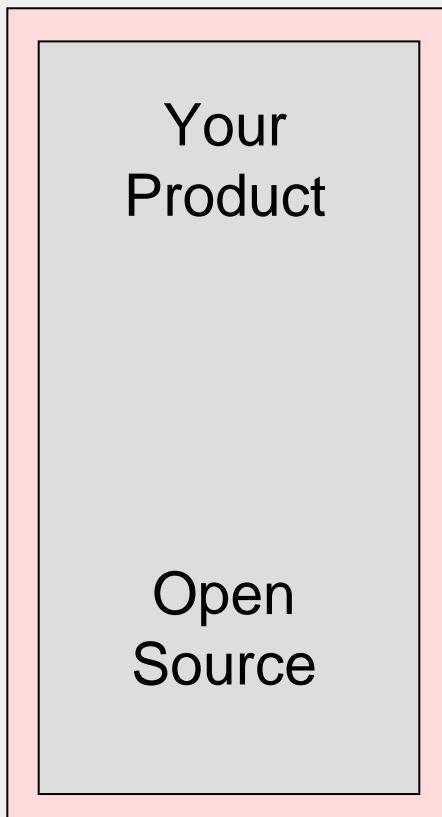


- Build software using OSS
 - OSS is a substitute for proprietary software
 - Build, buy, or open source
- Enablers
 - Linux and BSD
 - MySQL, BerkeleyDB
 - X, Qt, GTK, Apache, JBOSS, Tomcat
 - GNU, Perl/PHP/Python, Eclipse



OSS Business Models

Building OSS



- Develop and release software as OSS
 - Start a new OSS project
 - Open source existing proprietary software (or portions of existing software)
 - Extend an existing OSS project
- Build a community around the product
- Let the community drive product definition
- Models
 - Servicing OSS
 - Dual-licensing
 - “Widget frosting”
 - Value-added modules



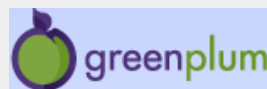
OSS Business Models



Who's Not Doing It?



Novell.



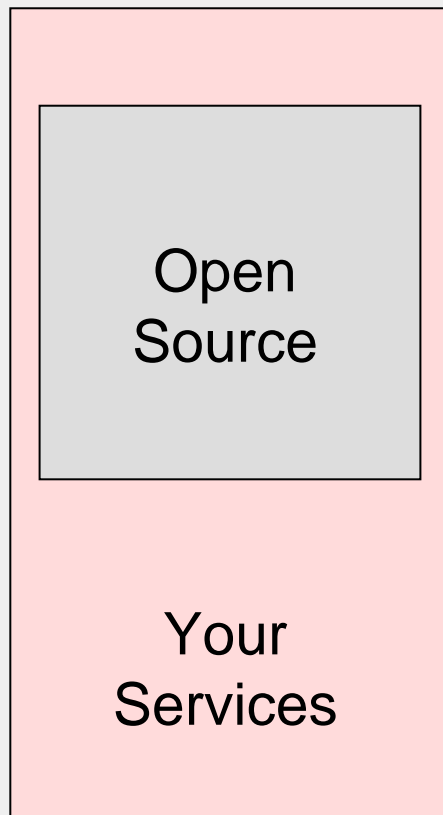
ORACLE





OSS Business Models

Servicing OSS



- Provide services supporting OSS
- What started with support for Linux. . . quickly spread to other projects
- Most prevalent model
- Taming the OSS experience (more like commercial software)
- Examples
 - Support and maintenance
 - Consulting
 - Training
 - Integration and customization
 - Development
 - Updates, testing, certification, and management
 - Indemnification and insurance



OSS Business Models



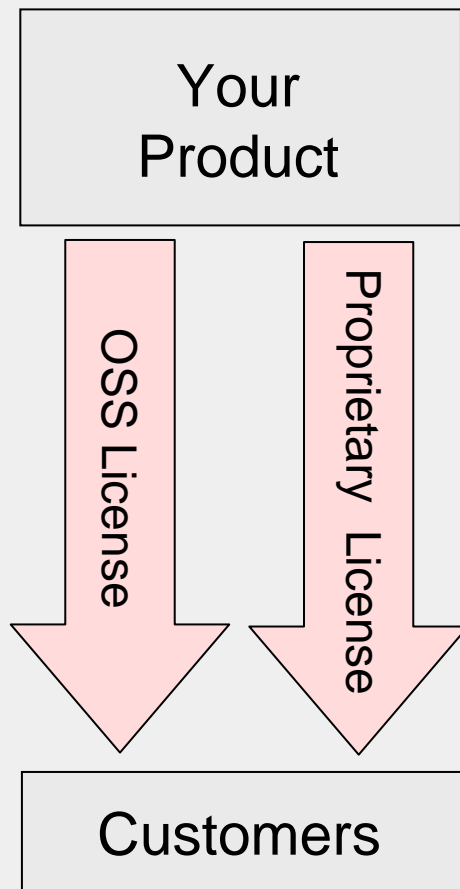
Who's Doing It?





OSS Business Models

Dual Licensing

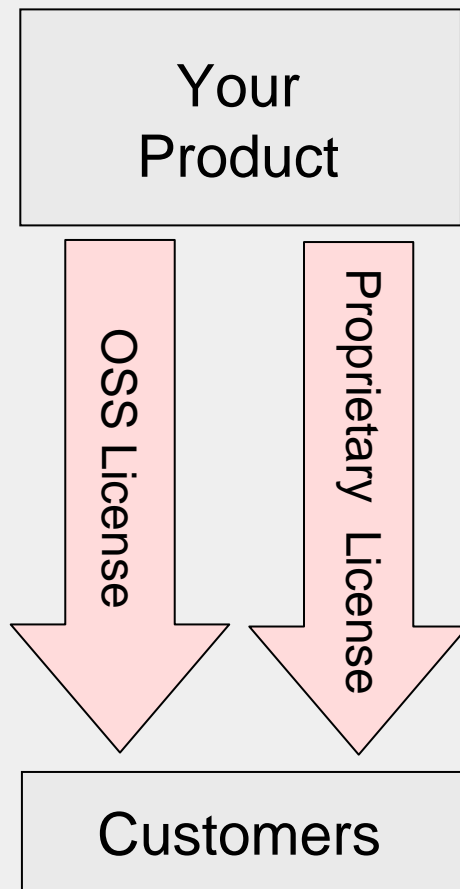


- Offer a choice of licensing options
 - OSS
 - Proprietary
- Commercial option
 - Fee-based
 - Service and support provided
 - Broader commercial rights
- OSS option
 - OSS license (e.g., GPL)
 - Usually unsupported
 - Subject to OSS license terms
 - Community contributions
- Multiple OSS options (e.g, Mozilla)



OSS Business Models

Dual Licensing



- Products are often identical
 - OSS license acts as a type of evaluation or beta option
- Variations exist
 - “Lite” or trial version
 - OSS as a “loss leader”
 - Complementary products
 - Third party products



OSS Business Models



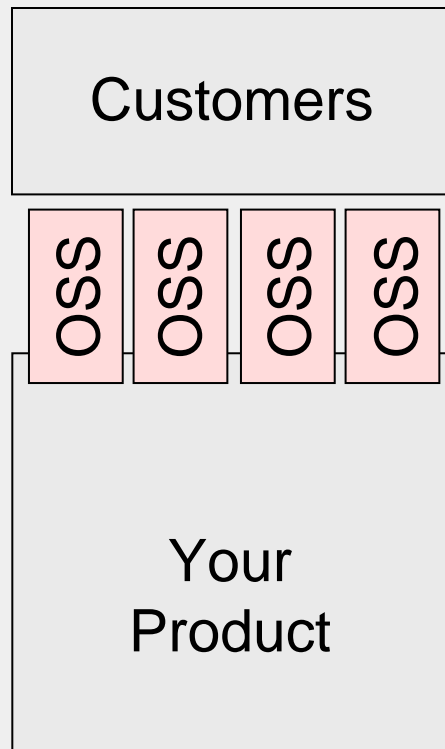
Who's Doing It?





OSS Business Models

“Widget Frosting”



- Release OSS complementary to a core product
- Draw customers to the core product
- Track customer needs
- Often includes software traditionally provided with the core product under a proprietary license
- Examples
 - Toolkits
 - Drivers
 - Interfaces
 - Unsupported extensions



OSS Business Models



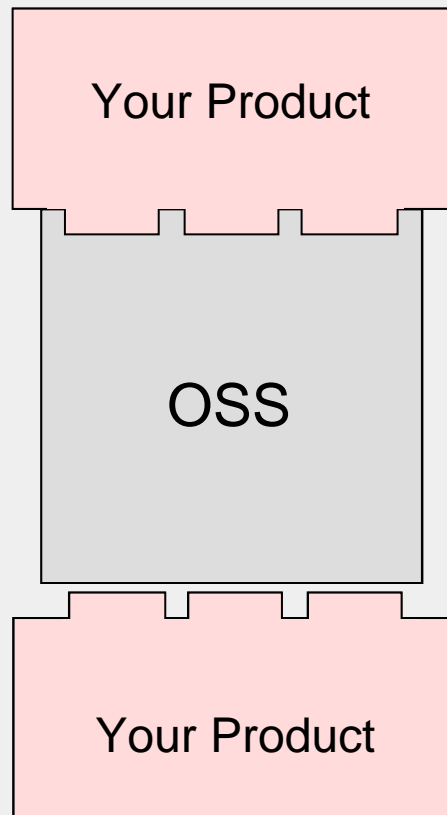
Who's Doing It?





OSS Business Models

Value-Add Modules



- Provide proprietary modules and extensions to OSS projects
- Lock-in users and developers to your version of the OSS project
- Monetize the proprietary modules and extensions using standard EULAs
- Provide support or other services for the OSS project
- Be careful:
 - Not to be passed by for more open solutions
 - Not to inadvertently open source your proprietary modules



OSS Business Models



Who's Doing It?





OSS Business Models

What are the practical and legal concerns with leveraging OSS in your business?



Practical and Legal Issues

Choice of License

- The right license is key
 - BSD (free for all)
 - GPL (free and open for all)
 - And all of the others. . .
- The same license can look different in different contexts
 - Release of code and development of an OSS community
 - Contribution of code and participation in the OSS community
- The question is often not whether to open source, but what rights to open source
 - What rights should/must you keep?
 - What rights can you give away?
 - What rights do you need back from contributors (assignment vs. license vs. nothing at all)?
- Balance your needs against those of the community



Practical and Legal Issues

Existing Customers and Vendors

- How will open sourcing an existing product affect existing customer and vendor relationships?
- What impression does it give?
 - Security
 - Quality
 - Commitment
- How will you deal with those customers who are now paying you for the software?
- Review existing agreements
 - Do license grants to customers restrict or prevent you from open sourcing the product?
 - Do license grants from vendors allow you to open source the product?



Practical and Legal Issues

Developing a Community

- Establishing a framework
 - OSS license(s)
 - IP contribution policy
 - Requirements for participation and hierarchy
- Generating interest often requires “seeding” the community
- Share and add-back
 - Submit bug reports
 - Submit patches to fix bugs
 - Submit new code/functionality
- Expect costs
 - Consultants and developers to work on project
 - Subsidized community leader
 - Managing the community
 - Maintaining morale



Practical and Legal Issues

Contributing Back to the Community

- Remember the *Golden Rule*
- Understand what you hope to gain
 - Building your own community
 - Direct project development
 - Morale
 - PR
- Get your own house (and policies) in order
 - Develop process for approval before code goes out
 - Educate and train developers regarding the policy
 - Monitor compliance



Practical and Legal Issues

Trademarks

- Trademarks are only valuable as long as they are controlled
 - Quality and source
 - “Policing”
- Losing control can mean losing rights in the mark
 - Dilution
 - Blurring
- OSS is about loosening control
- How far can an OSS release be modified by the community before your trademark should no longer be used?
- Implement and closely follow a trademark policy



Practical and Legal Issues

Patents, Copyrights, and Trade Secrets

- OSS licenses can and do affect IP rights
- Trade secrets – once the genie is out of the bottle. . .
- Patents
 - Certain OSS licenses can give an implied license to patents of the licensor reading on the OSS
 - Others include more express grants (e.g., GPL v3.0)
 - Beware of “patent termination” clauses
- Consider the potential affect on your IP rights
 - Evaluate licenses when making contributions
 - Choose licenses carefully when releasing code
- Understand the full extent of the IP rights you are contributing under the OSS license
- Develop and enforce OSS contribution policies to reinforce your IP strategy



Practical and Legal Issues

Exit Strategy

- Appeal to potential funding sources and acquirors varies
- Many embrace OSS, others are wary
- Once you introduce OSS, can you go back?
 - Closely control IP ownership and rights
 - Compartmentalize OSS liability?
- Understand your potential funding sources and acquirors and what they think about OSS
- Make sure that OSS does not close your potential for exit



Practical and Legal Issues

OSS Procedures and Controls

- Existing IP procedures and controls are inadequate for OSS
 - Significantly different from proprietary software
 - Even the best existing policies likely leave gaps
 - Industry leaders are establishing OSS-specific compliance procedures and controls
- Implement OSS review and compliance program
- Monitor compliance
 - Developers and other employees
 - Contractors, outsourcers, etc. must also observe program rules
- Make each use or contribution of OSS an **intended and compliant** use or contribution of OSS



Practical and Legal Issues

OSS Procedures and Controls

- Field an OSS compliance team
- Establish and implement OSS policies and controls
 - Control procurement of OSS and entry into the organization
 - Review and track use of OSS by the organization
- Conduct audits
- Do not document OSS usage and contribution in hindsight
- Educate employees regarding OSS and applicable policies
- Develop enforcement mechanisms and review compliance
- Maintain and update policies and controls to adjust to changes



Conclusion

Caveat Entrepreneur

- Open Source is not just a marketing term – it takes work
- If you open it, they will . . .come. . . or . . . yawn?
- Understand where your value add is today and will be tomorrow. . .
- Understand the role of IP in facilitating the business model and the value proposition
- Develop and implement OSS procedures and controls
 - OSS IP strategy
 - License compliance policy
 - Internal review, approval, and compliance guidelines

Thank you.



Holme Roberts & Owen LLP
Attorneys at Law

