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**Wednesday, October 22
11:00 am-12:30 pm**

906 Open Source-Into the Main Stream

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Kat McCabe
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Robert Tiller
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Faculty Biographies

Gemma Dreher

Gemma Dreher is senior counsel for the BAE Systems Electronics and Integrated Solutions Operating Group. She provides advice and services concerning the legal matters of the operating group, and represents the operating group in adversary proceedings. She serves as a consultant to management and external spokesperson for the organization on major matters pertaining to its policies, plans, and objectives.

Prior to BAE, she was vice president and general counsel for Pragmatech Software, Inc.

Ms. Dreher received her BA from Regis College and a JD from Northeastern University School of Law.

Kat McCabe

Kat McCabe is the general counsel for TasteBook, Inc., based in Berkeley, California and Optaros, Inc., based in Boston.

Prior to that, Ms. McCabe was vice president and general counsel of Black Duck Software, based in Waltham, Massachusetts. In her role at Black Duck, Ms. McCabe was a frequent public speaker on open source licensing and legal issues. Prior to Black Duck, Ms. McCabe spent five years as general counsel of Kodak Imaging Network, Inc. (formerly Ofoto), based in Emeryville, California. Prior to Ofoto, Ms. McCabe was in the licensing group of Fenwick & West, LLP and the business department of Farella, Braun & Martel LLP.

Ms. McCabe earned an AB from Brown University and a JD from Harvard Law School.

Robert Tiller

Rob Tiller is vice president and assistant general counsel, IP with Red Hat, Inc., the world's leading provider of open source technology to enterprise customers. His responsibilities include open source licensing, patent, and trademark matters.

Prior to joining Red Hat, he was a partner with Helms, Mulliss & Wicker, PLLC, where he specialized in commercial litigation, including IP litigation. Prior to private practice, he clerked at the US Supreme Court for Justice Antonin Scalia.

He received a JD from University of Virginia and a BA from Oberlin College.

Agenda

- The Software Development Landscape
- Software Licensing and Compatibility
- Policy Development and Deployment
- Recent Developments

Open Source into the Mainstream

The Landscape

Development Landscape - Past

- Vendors – Centralized Development
  - internal development
  - small teams
  - few locations
  - relatively simple IP issues
- Buyers
  - relatively few vendors providing whole solutions
  - internal controls through procurement

Development Landscape - Present

- IP Inherently More Complex
  - one software solution can have dozens of component parts from dozens of different sources
- Availability of Open Source Code
  - vast and varied resources on the web
  - easily downloaded, used and redistributed

Development Landscape - Present

- Vendors – Disbursed Development
  - teams located all over the world
  - outsourcing
  - licensing-in instead of building from scratch
- Buyers
  - many more vendors
  - many more products

Development Landscape - Present

- Absence of a Procurement Process for Open Source Code
  - open source code is protected by copyright and provided under a license
  - code downloaded without review or a record of the license
  - lack of understanding of the license terms
  - availability of code all along the distribution chain
  - need for licensing knowledge and new processes

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Development Landscape – OS Projects

- Personal computing power and the Internet enable collaboration among developers
- Developers organize projects
  - referring to the specific technology and
  - the structure needed to manage their collaboration and promote contributions to the work
- Larger projects are run through non-profit foundations
- Significant resources and support from major tech companies (IBM, HP, Sun, AOL, Google, Intel and others)

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Development Landscape – OS Projects

- **Mozilla and the Mozilla Foundation**
  - In 1998, Netscape distributed source code for its browser and other Internet technologies for the purpose of disrupting Microsoft and the market for Explorer
  - Netscape forms Mozilla Organization to house that activity; in 2003, AOL forms Mozilla Foundation to continue efforts
  - Today, provides structure for a number of projects for Internet-based technologies
  - Provides infrastructure for community development and collaboration but not the development itself
  - Projects licensed under the Mozilla Public License (MPL)

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Development Landscape – OS Projects

- **Eclipse Project and Eclipse Foundation**
  - Software development tools available under the Eclipse Public License (EPL)
  - The project itself created by IBM in 2001, foundation formed in 2003; currently has over 80 member companies
  - Foundation provides staff, IT infrastructure and legal structure for accepting code into the code base and licensing it back out again
  - Developers not employed by Eclipse (though may be employed by other companies)
  - Committees determine direction of the project; code vetted both technically and legally before included in the project
  - Transparency is a key goal

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Development Landscape – OS Projects

- **Free Software Foundation (the FSF) and GNU**
  - Founded in 1985 by Richard Stallman to support development of the GNU operating system (an alternative to UNIX)
  - Grassroots organization, provides infrastructure for on-going development
  - Author of the General Public License (GPL)
- **Linux Foundation and Linux**
  - In 1991, Linus Torvalds invents the Linux kernel
  - Linux (aka GNU Linux) very popular OS, market disruption for Microsoft
  - The Linux Foundation formed to sponsor Torvalds and the kernel developers (and "protect their independence")
  - Member list is a "who's who" of technology companies (companies that want to promote alternatives in the marketplace)

Development Landscape – OS Projects

- OS Projects are a Significant Resource
  - Sophisticated organizations
  - Strategically important in the marketplace
  - Operate differently than commercial organizations, though often have strong commercial ties
- Open Source also made available through Commercial Companies and Individuals

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Licensing and Compatibility

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Development Landscape – OS Benefits

- Eliminate vendor lock-in
- Re-use brings efficiency
  - cost reduction
  - increased speed to market
- Allocate resources to competitive differentiation
- Increase value with user contributions to the code base

The Philosophy, Politics and Law of Open Source Licensing

- Legal structures based on ideals
  - Freedom
  - Openness
  - Community
- Richard Stallman and the Free Software Foundation
  - The idea of freedom
    - Free as in liberty, not as in beer
    - Communism?
    - Totalitarianism?

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The Four Freedoms

- Freedom to run software for any purpose
- Freedom to modify the program to suit your own needs
- Freedom to redistribute copies
- Freedom to improve the software and distribute improvements

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Copyleft

- Term of Richard Stallman's
  - Also called reciprocal license, hereditary
- Flips copyright to serve the objective of freedom
- Permission to take software and run it, copy it, modify it, and distribute modified versions
  - But forbids adding additional restrictions
  - Modified version, if distributed, must be just as free as the predecessor
- Expands universe of FOSS

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Open Source – the Terminology

- A rose by any other name?
- Corporate rebranding of Free Software=Open Source
  - Open Source Definition spells out important points, including:
    - Program must include source code
    - License must allow derivative works and allow distribution under the same terms as the original
    - License applies to all recipients without execution
  - Open Source Initiative – approves licenses
  - FOSS – a compromise term

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Types of licenses

- Permissive (aka Academic)
  - BSD, MIT
- Copyleft (aka Reciprocal)
  - GNU General Public Licence
- Corporate
  - MPL, CPL, EPL
- Proprietary
  - Microsoft, Apple, and many others

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Basic licensing provisions

- The leading open source licenses all grant broad rights of use, modification, and redistribution
  - They all contain warranty disclaimers
  - They all disclaim liability for damages
- Main variations relate to
  - Copyleft
    - Treatment of derivative works
  - Patent provisions
  - Formalities

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It's not that complicated (usually)

- Make sure there's a FOSS license
- Read the license
- Verify that the planned use is consistent with the license
  - If you're simply running the software (and not modifying it), there are unlikely to be any problems
  - If you're modifying the software without distributing, there are probably no problems
  - If you're modifying and distributing, more care is required

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Seeing the forest for the trees

- GPL and LGPL licenses are used by the majority of important open source projects (around 70 percent)
- Only a handful of other licenses have been widely accepted
  - Most popular are BSD, MIT, Apache, MPL, CPL, EPL
  - Sixty some OSI possibilities, but most are little used
- These are templates
  - Terms aren't negotiable
  - A single program may have more than one license

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Compatibility issues

- Compatibility issues arise when code subject to different licenses is combined
  - Software may be modified with software from any number of sources
  - Different modules may have different licenses
  - Licensing terms may impose varying obligations
  - GPL v. 2 says "You may not impose any further restrictions on the recipients' exercise of rights granted herein."
    - Other licenses may have "further restrictions."

Possible combinations

- GPL + GPL = no problem
- GPL + LGPL = no problem
- GPL + BSD = no problem
- GPL + MPL = uh oh
  - But only if program = 1

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Policy Development and
Deployment

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Methods of combining code

- Static versus dynamic linking
  - Different ways of combining code
  - One program or two?
  - LGPL may be statically or dynamically combined with proprietary code

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Why have an OSS policy?

- Jacobsen v. Katzer, No. 2008-1001(Fed. Cir. Aug 13, 2008)
- OSS can not be avoided
- OSS strategy should be articulated
- Bottom line: Use should be intended and controlled

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Policy Objectives

- Before writing a policy, understand OSS strategy
  - Is the use of OSS encouraged, required or viewed as evil?
  - What is the goal in using OSS
  - What requirements are imposed on subcontractors, vendors?

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Policy Development

- Components may include:
  - Definition of OSS
  - Approval process
  - Data Collection
  - Source of OSS

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Policy Objectives

- How will strategy impact policy development?
  - Entry into organization
  - Release to customers
  - Release to community
  - Authorized OSS licenses

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Policy Development

- Key questions:
  - Who is authorized to approve new OSS licenses?
  - How does OSS enter the company?
  - Under what circumstances may OSS be modified?
  - Under what circumstances may OSS be redistributed?

OSS Policy vs. Other policies

• Examine other policies for consistency:
  – Procurement policies
  – IT policies
  – Security policies
  – Computing resources policies
  – External communication policies
  – Human resource policies

Implementation and Enforcement

• Education, Education, Education.
• OSS questionnaire
• OSS audit
• OSS issues in commercial applications

Issues in Achieving Consensus

• This is a team game!
• Cultural issues
• Process issues
• Cost of approving OSS v. purchasing proprietary software
• Repeatable and scalable

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Recent Developments

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GPL version 3

- Finalized June 2007
- Already adopted by several significant FOSS projects
  - GCC
  - OpenOffice
  - Samba
- Some FUD (fear, uncertainty, and doubt) – but why?

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Main changes in GPL v. 3

- Anti-lockdown provisions for consumer products
- Waiver of power to forbid circumvention
- Treatment of contractors
- Patent provisions
- Microsoft-Novell deal
- Termination provision
- License compatibility

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Fundamental concepts unchanged in GPL v. 3

- Basic permissions are the same

- Copyleft is basically the same

- Language is more precise and more international

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Most changes unlikely to affect most users

- Anti-lockdown and DMCA provisions have limited applicability
- Patent provision similar to provisions in other well established licenses
  - Provides for license termination if a downstream licensee brings a patent infringement claim
  - Grants a patent license for claims reading on modified version