Open Source and the Family Business

Enforcement and the Next Generation

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Open Source as a “Family Business”

<table>
<thead>
<tr>
<th>Year</th>
<th>Corporate</th>
<th>Individual</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>20%</td>
<td>80%</td>
</tr>
<tr>
<td>2010</td>
<td>80%</td>
<td>20%</td>
</tr>
</tbody>
</table>

Numbers are just folklore! – But still interesting.
Family Businesses and Succession Planning

According to The Family Firm Institute, about 30% of family businesses survive into the second generation, 12% into the third generation, and 3% beyond.

Succession planning is difficult!
Three Legal Principles of Open Source Licensing

- Conditional licensing
- Copyright standing
- Direct licensing
Conditional licensing

IF

THEN

Copyright Infringement!
Standing to Sue

• In the U.S., only an owner or exclusive licensee of a copyright can enforce it in court

• Non-exclusive licensees cannot enforce

• (For brevity, I will refer to the owner of the copyright as an author, though authors can sell their rights.)
Direct Licensing

Many contributor copyrights...

Open Source Code Base

...plus one for the pot
CLAs, and License In = License Out

• CLA
  ○ Author licenses to project and all recipients
  ○ Project passes on licenses to the world
  ○ This is the model of Apache Foundation (and many permissive license projects)

• License In = License Out
  ○ All contributors license to the world
  ○ This is the model of the Linux Kernel (and many copyleft license projects)

• All licenses are non-exclusive
• Project has no standing to sue, except the “one for the pot”
What Happens Now?

Copyright term in US = Life + 70
Right is inheritable
The problem
This won’t work

Don’t ever take sides against the family again. Ever…

I knew it was you, Fredo. You broke my heart...you broke my heart!
How to Solve the Problem of Rogue Enforcers

• Ownership by project
  ○ FSF does this for the GNU project

• Enforcement agreement between authors and project
  ○ Efforts in process to accomplish this
Why Should I Care?

• Expect a possible sea change in contribution terms
  ○ You may be asked to refrain from enforcement unless the project agrees
  ○ You may be asked to assign rights to the project
  ○ License in = License out may be, in effect, a thing of the past
Available in paperback or Kindle at Amazon.com
or
email me for a free pdf copy