

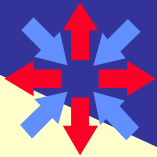
Hot Topics in Software Commercialization:

The Receiving End of ... whatever

LES Annual Conference

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**Digital
Thinking Inc.**



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... “whatever” ?

- “Open Source” generates several *impressions* among a wide variety of software/IP players
 - Some are harmlessly imprecise
 - Some are dangerously assumptive
 - Some are imprudently dismissive
- LES/HTS/Software committee should take an active role in presenting rational, clear information to let members and others derive their own **informed** positions

Who Me ?

- **You have local, specific responsibilities for licensing-in software in a business/organization**
- **You have global, strategic responsibilities for policies and standards for licensing-in software in a business/organization**
- **You are, or provide services to, a licensee or developer/licensor of software**

Structure

- Not broad expository
- Focus on elemental issues and process recommendations
 - Headline item
 - Brief description
 - Discussion as warranted
- **Disclaimers**
 - **IANAL (I am not ~~a lawyer~~ an attorney)**

Open Source

- What exactly does “Open Source” convey ?
 - a set of terms & conditions **NO**
 - repeal of the Copyright Act **NO**
 - certain harm to business **NO**
 - the absence of licensing **NO**
 - free (as in “free beer”) code **NO**
 - end of the digital economy **NO**
 - a challenge to SW biz as we know it *- maybe*
- Why is this so unclear ?
- What can we do to gain clarity, be effective and gain value from it as a licensee ?

Clear & Specific

- The Open Source Initiative
www.opensource.org
- The Open Source Definition
www.opensource.org/docs/definition.php
- The Open Software License
<http://rosenlaw.com/osl2.0.html>
- The GNU General Public License
<http://www.gnu.org/licenses/gpl.txt>

...there are several other clear elements

Not Clear, Unbounded and Sometimes Spooky

- Generalizations
“open source licenses provide X rights/restrictions”
- The Movement
how many *movements* are 100% heterogeneous ?
- Copyleft
not a departure from Copyright at all
- “No worries, it’s open source”
still requires understanding and discipline

Specifically Unclear (and driving ongoing efforts)

- Inheritance/succession (aka GPL “infection”)
 - is actually more limited than thought
- Derivative Works
 - is actually pretty tricky in some licenses
- Distribution
 - crossing which line invokes Distribution rules ?
- Philosophy, Background and other *thoughts*
 - integrated; meaningful; conflicts ???
 - added by very inexperienced license authors
- Target actions by competent licensing professionals

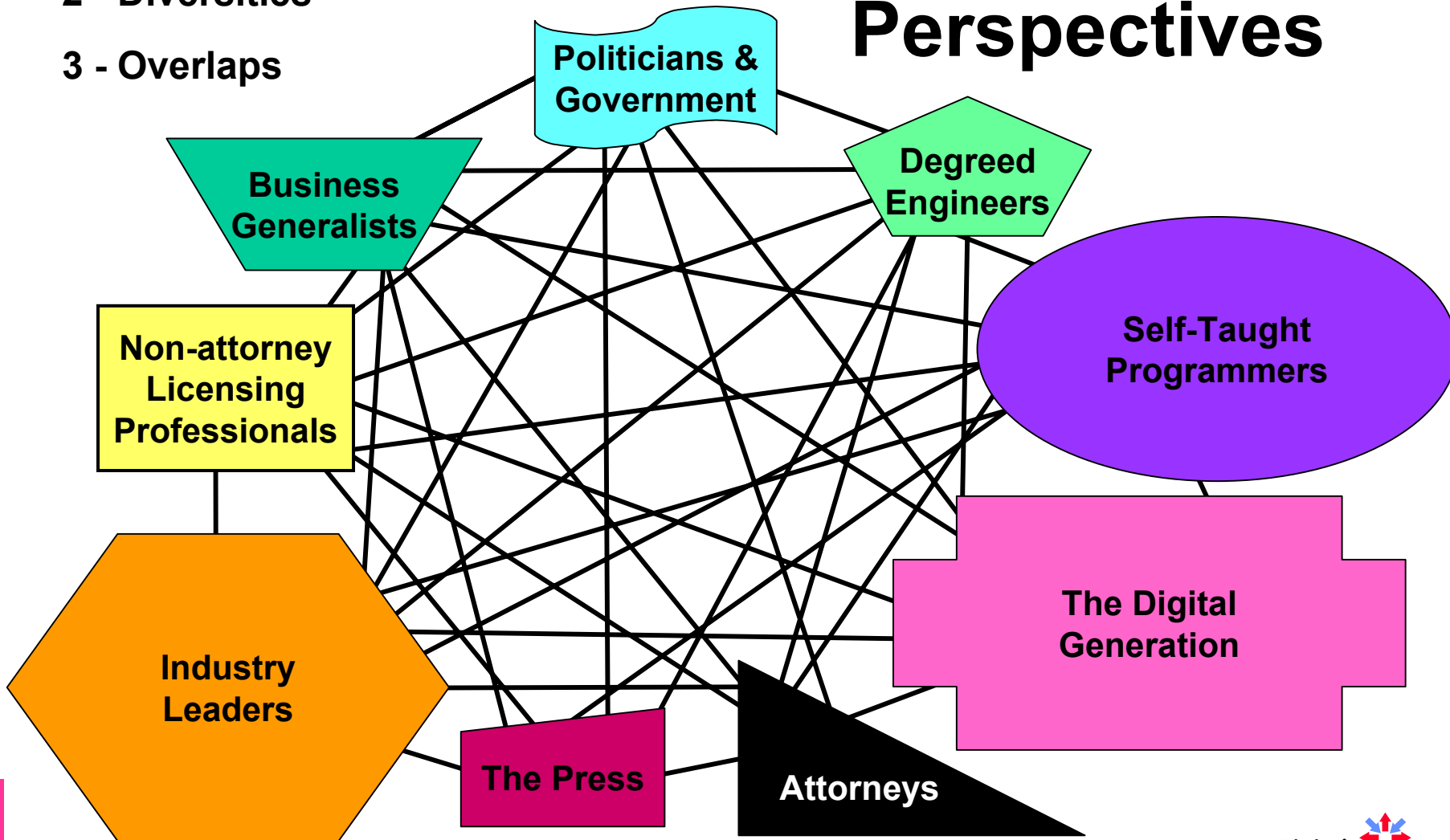
Specifically Unclear

(and driving ongoing efforts)

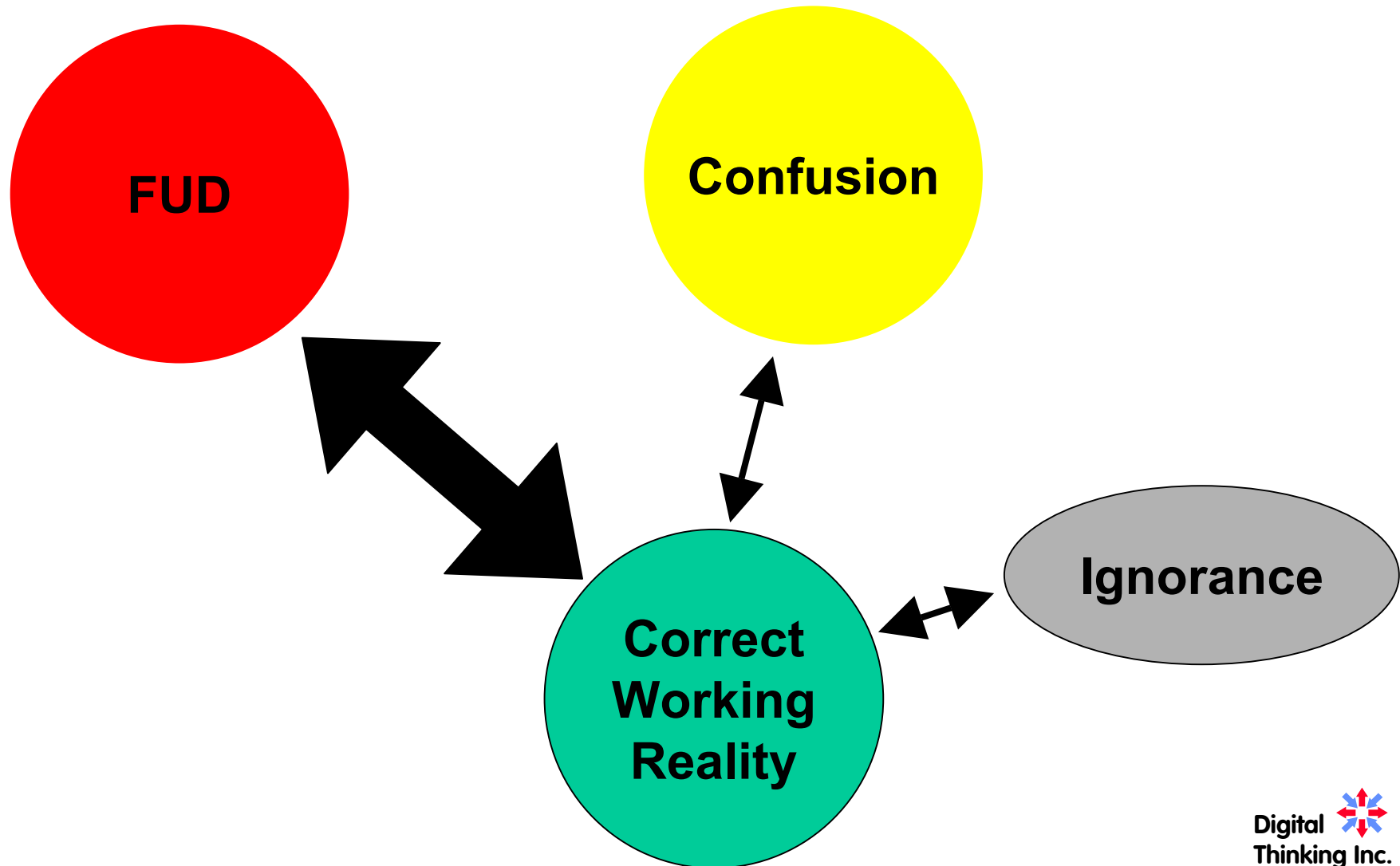
- How do I prudently use Open Source within my business ?
- Why should my business master and exploit Open Source ?

Participants & Perspectives

- 1 - Newer players
- 2 - Diversities
- 3 - Overlaps



Needed



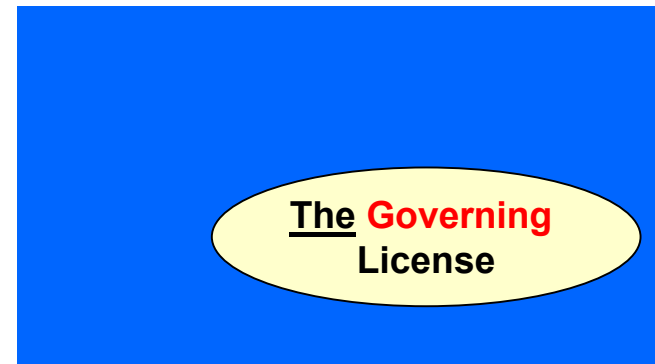
Generalized Issues Feeding Concern

- Weak ethic or execution behind all software licensing operations
- Enormous distance between counsel and operatives (users, admins, 1st level supervision, functional management)

Open Source Licensee Rule #1

- No different from what has been said for a long time for any kind of license
- Forget previous or other licenses
- Ignore rumors and peripheral banter
- Do not rely upon explanations from the untrained or unaccustomed

The Transaction



First Moves

- Open Source doesn't make licensing *everybody's* task; handle like other licensing
- If no Licensing Office or Software Business Office, add Open Source to motivation for one
- Devise uniform model of ingress and usage and ongoing center of responsibilities
- Address the tough questions with process

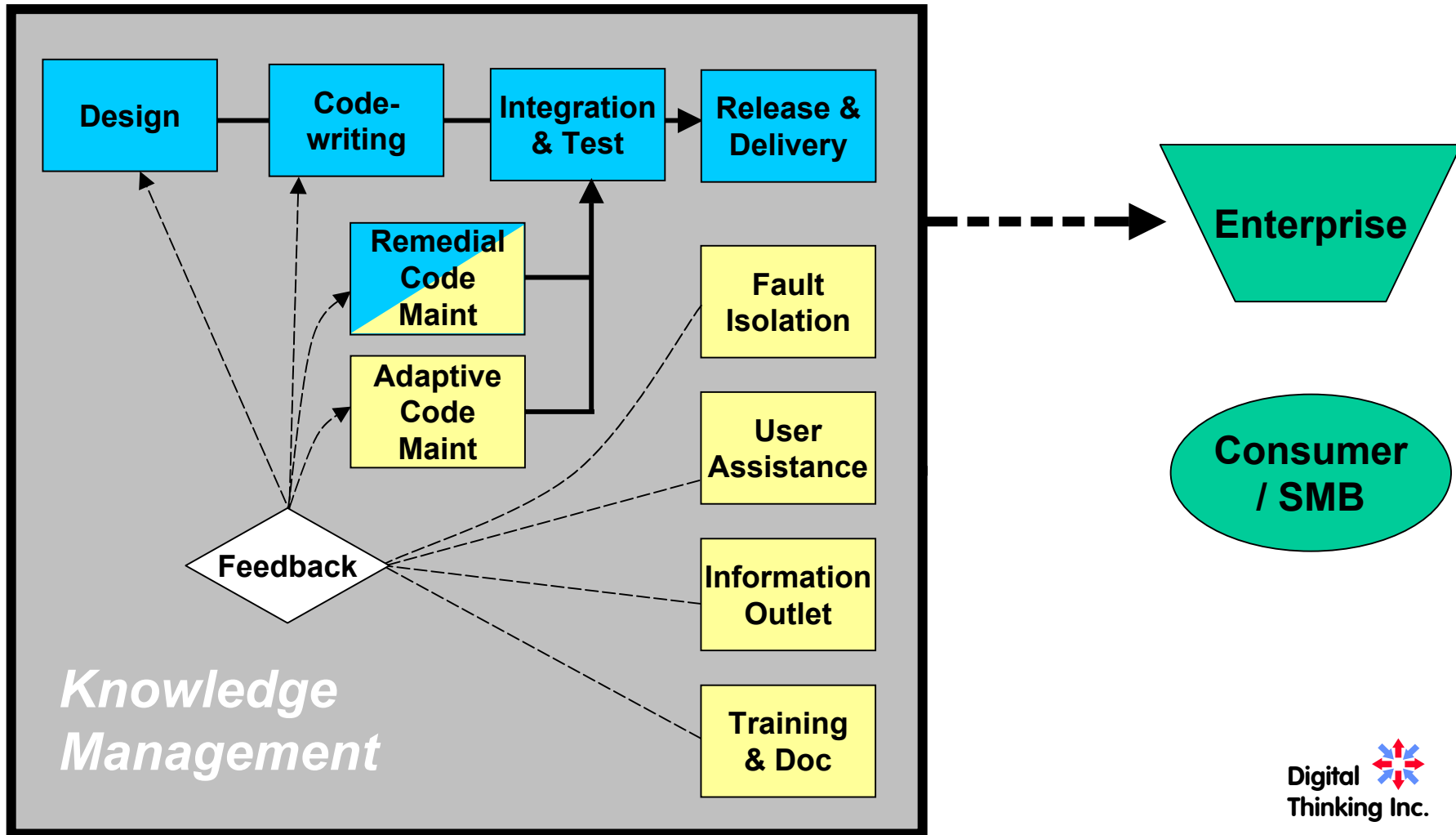
What *Kind* of Choice is Open Source

- Product versus product selection ?
- Platform versus platform selection ?
- Supplier versus supplier selection ?
- A **fundamentally** different model
(economics and operations) for satisfying
technological needs

Why Pursue Open Source

- Zero-dollar software ?
- Philosophical & political agenda ?
- Backlash against existing industry players ?
- It's BUSINESS !
 - Total Cost of Ownership
 - Flexibility and control of destiny
 - Making the best of evolution of industry and its economics
 - Right for governments also

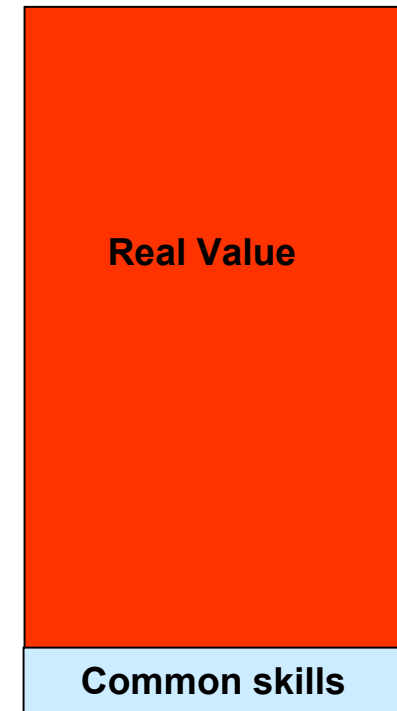
Today's Software Supplier Relationship



Software Value/Price

1986

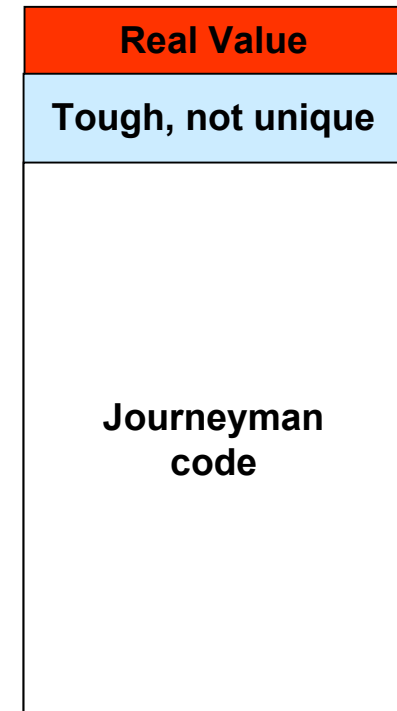
- Few programmers/companies
- Few primitive tools
- Mostly new code
- Business not driven by software; little money for it in marketplace
- Value of software had to directly and indirectly justify hardware
- Proposition was high value and that was fairly legitimate



Software Value/Price

2001

- Many programmers/companies
- Considerable *hidden* talent
- Highly-evolved productive tools
- Enormous accumulated codebase
- Much greater flow in total economy
- Feature ceiling



Reality Check

- IP holders should be able to protect, and derive profit from, their IP in proprietary products

this is LES 

- How they choose to *utilize* copyright protection, in the pursuit of a software business, is still very flexible and new opportunities for new thinking abound

Open Source & Patents

- You may have heard about risks of “obtaining and enforcing patent prosecution based on products/services incorporating Open Source software” ...
 - Is this risk not the same regarding any acquired software ?
 - Is this “advice” actually contrived **FUD** ?

Open Source & Patents

- Considering the risks to Open Source licensees of patent-infringing Open Source code ...
 - **Are they any less exposed than when using code under the typical license that disclaims liability for infringement ?**

Open Source in the (Near) Future

- Continuing improvement in licenses in meeting businesses' need for rigor
- More business-case-driven acceptance
- Evolution of best practices for enterprise licensees
- More established proprietary software companies moving to hybrid models of development and distribution

Resources

- Open Source Initiative
 - www.opensource.org
- Free Software Foundation
 - www.fsf.org
- Linux Journal
 - www.linuxjournal.com
- New Zealand Open Source Society
 - <http://www.nzoss.org.nz/portal/modules.php?name=Content&pa=showpage&pid=45>
- The Creative Commons
 - <http://creativecommons.org>
- David Wheeler’s “Why Open Source ...”
 - http://www.dwheeler.com/oss_fs_why.html

Resources

- <http://sourceforge.net>
- <http://opensource.ucc.ie>
- <http://opensource.mit.edu>
- <http://www.gnu.org>

- <http://www.kuro5hin.org>
- <http://slashdot.org>

Summary of Recommendations

- Embrace the future
- Create a person/team for Open Source management
- Develop open source licensing expertise
- Add Open Source to internal IP education for all
- Use brief, but solid, central license-in process
- Monitor, inquire and stay connected
- Recognize cultural evolution
- Remember the canary

Questions: pointed -or- broad

Thank you.

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