



EVERYTHING MATTERS

Implementing Your Open Source Business
Strategy through Your Legal Strategy
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Global Locations

EVERYTHING MATTERS



- A global organization
 - 64 offices in 25 countries
 - 3,700 lawyers
 - 8,000 people worldwide
 - Over 1,500 lawyers on each side of the Atlantic
 - Major presence in Asia
- Only global law firm with strategic focus on technology and emerging growth

DLA PIPER OFFICES

Austria
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Bulgaria
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Japan
Netherlands
Norway
Poland
Russia
Saudi Arabia

Singapore
Slovak Republic
Spain
Thailand
Ukraine
United Arab Emirates
United Kingdom
United States

DLA PIPER GROUP FIRMS

Australia
Denmark
Egypt
Ghana
New Zealand
South Africa
Sweden
Tanzania
Zambia

DLA PIPER FOCUS FIRMS

India
Ireland
Portugal

DLA PIPER AFFILIATE FIRM

Saudi Arabia



- One of the 10 largest law firms in the US
 - 1,500 attorneys
 - National coverage in major US business, technology, and finance centers
- Leading national corporate practice
 - 250+ corporate and securities attorneys
 - 250+ corporate finance attorneys
 - Corporate counsel to more than 120 public companies
 - Ranked among the top IPO, M&A, and venture finance firms in the country
- National reputation in intellectual property
- Leading litigation practice
 - Securities, intellectual property, product liability, commercial
 - 550 attorneys
- Distinctive government affairs and regulatory practice

Domestic Locations

EVERYTHING MATTERS



- Full-service IP
 - Litigation and Transactions
 - Patent, Trademark, Copyright, Trade Secrets, New Media, Domain Name, Internet
 - Acquisition, Development, Licensing, Enforcement
- 425 Lawyers Globally
 - Over 225 IP Lawyers in the US
 - 80+ Patent Litigation
 - 75+ Technology Transactions
 - 50+ Patent
 - 45+ Trademark and Copyright
 - 40+ Technology and Sourcing

- Wrong IP strategy can be fatal
 - SCO
 - Napster
 - Grokster
- Wrong IP strategy can be expensive
 - MP3.com \$163,000,000 (and counting)
- Wrong IP strategy can cost you: Think Dynamics exit price reduced by 30% because of uncertainty about open source

- Dr. Seuss Estate: copyright and trademarks
 - \$1 billion
- TI Licensing: patents and trade secret
 - \$770 million
 - 42% of operating profits
- IBM: patent licensing
 - \$1 billion per year

- OS Revenue Sources
 - License fees (dual licensing)
 - Hosting fees
 - Customization
 - Support
 - Proprietary add ons
 - Consulting
- Type of product
 - Application
 - Infrastructure

- Business model (may follow more than one)
 - Dual licensing (same code; MySQL)
 - Dual licensing (different functions; Zimbra, SugarCRM)
 - Subscription (Red Hat)
 - Services (Collabnet)
 - Training
 - Hosting
 - Integration
- Type of project
 - Existing
 - New
 - Proprietary to Open Source

- Channels
- Interaction with other software/relationship with third parties
- Community type
 - Individual
 - Corporate
 - Domestic/foreign
- Competitors
 - Possibility of being lost in the stack
 - Possibility of SAAS competitor

Legal Components of Open Source IP Strategy

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- Patents
- Copyrights
- Trademarks
- Trade secrets
- Domain names
- License
- Community

WHAT IS A PATENT?

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- An exclusive right to exclude (product/service can have multiple patents cover it)
- Granted by the federal government
Useful/Novel/Non-Obviousness
- For a limited term
 - **20 years after filing (after June 8, 1995 (some extensions for drugs))**
- Examples: drugs, devices, manufacturing process, uses
- Rights to exclude making/using/selling/importing

WHAT IS A COPYRIGHT?

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- Original works of authorship
 - Fixed in any tangible medium of expression
 - Capable of being discerned by someone directly or through use of a machine
 - Books, movies, software, music
- Protects expression (not the idea)
- Federal protection
- Rights: Reproduce/Distribute/Make derivative works(modify)/Publicly perform/Publicly display
- For a limited term (for new works, term is complicated for old works)
 - Individual: life and 70 years
 - Company (work for hire, not assignment): shorter of 95 years since “publication” or 120 years after creation.
 - Example: software, UI

WHAT IS A TRADEMARK?

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- Word, symbol, device, sound or smell which identifies a product as coming from a certain source and as being of a certain level of quality.
- Examples: Linux, SugarCRM, Apple “bitten apple” logo
- Rights: Prevent use of confusingly similar marks
 - Examples: Apple vs. Pineapple
- Strongest: Arbitrary such as Apple or Xerox
- Weakest: Descriptive such as Windows
- Generic: PC for computers/'386 for microprocessors
- Must “police” use of mark

WHAT IS A DOMAIN NAME?

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- Internet address:
 - Generic TLD (.com/.biz/.org/.net)
 - Country TLD (.us/.de/.uk)
- Rights: Use as addresses
- Similar to but not trademarks; quasi contract rights

WHAT IS A TRADE SECRET?

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- Information which:
 - Is not generally known to others
 - Confers an economic or business advantage
 - Is the subject of reasonable efforts to maintain secrecy
- Term: potentially perpetual
- Examples: source code, methods of programming
- Rights: Prevent misappropriation (wrongful taking) but reverse engineering permitted unless contractually prohibited

Putting it Together: Linux Distributors

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- Existing project, Linux, so license choice is limited
- Business model: subscription/services
- Main intellectual property rights:
 - Trademark
 - Copyright (in company developed code)

Putting it Together: New Infrastructure Project

EVERYTHING MATTERS

- Business model: Dual licensing (different code) most fundable
- License choice: open
 - Need to consider interaction with third party products (i.e. GPL is incompatible with Apache and many other licenses)
 - Acceptance by community
- Main intellectual property rights:
 - Trademark
 - Copyright (in company developed code)
 - Patent
 - Trade secret (in part of code which is not distributed as OSS)
- Possible license
 - MPL, CDDL, CPAL or limited third party integration: GPLv2, GPLv3, AGPL

Putting it Together: New Infrastructure Project

EVERYTHING MATTERS

- Business model: Services
- License choice: open
 - Need to consider interaction with third party products (i.e. GPL is incompatible with Apache and many other licenses)
 - Acceptance by community
 - Ease of adoption
- Main intellectual property rights:
 - Trademark
 - Copyright (in company developed code)
- Possible license
 - Apache, BSD, MIT

Putting it Together: New Application Project

EVERYTHING MATTERS

- Business model: Dual licensing (different code) most fundable
- License choice: open
 - Interaction with third party products likely to be less important
 - Acceptance by community
 - Type of competition
- Main intellectual property rights:
 - Trademark
 - Copyright (in company developed code)
 - Patent
 - Trade secret (in part of code which is not distributed as OSS)
- Possible licenses
 - GPLv2, GPLv3, AGPL, MPL, CPAL, CDDL

Famous Open Source IP Mistakes

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- SCO:
 - Failure to own copyright, and thus no right to file suit against non licensees (AutoZone)
 - “Silver bullet” waiver right by Novell and thus Novell can cure breaches by licensees (IBM)
- Techwhale: No community acceptance
- Medsphere: Release by founders
- GCC License: GPL needs to be “amended” for library
- JBoss: LGPL choice very confusing for licensees

Common Software Company IP Mistakes

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- Ownership: prior employers
- Ownership: missing founder
- Ownership: copyright transfer under “work for hire” not assignment
- Patents: failure to file prior to release of software
- Patent strategy: do patents cover current products/business
- Trademarks: failure to register
- Domain names: failure to register
- License: use of software with incompatible licenses in the stack

KEY TO IP SUCCESS

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- Understanding business model
- Understanding role of IP
- Developing IP strategy
 - What to “give away”
 - What to license
 - Role of patents & trademarks

- Patent with care: Only 15% of patents for most large companies are useful
- Substantive scope – claims
 - Choke point
 - Picket fence
- Geographic scope
 - Countries in which used
 - Countries in which manufactured

DEVELOPING A TRADEMARK STRATEGY

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- Overall strategy
- Company
 - Single brand
 - Microsoft
 - Oracle
 - Product
 - Proctor & Gamble (Tide, Metamucil, Pantene)
 - General Motors (Corvette, Cadillac, Pontiac)
- Mixed
 - Lead brand: Adobe Illustrator
- Geographic scope
- Family of trademarks

WHAT CAN YOU DO TO IDENTIFY & PROTECT YOUR IP?

An Integrated Approach

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1. Establish a program to identify & register your copyrighted works.
2. Establish a patent committee to identify potentially patentable technologies & implement procedures to determine when to file & abandon patents.
3. Review your security procedures to ensure that you are taking the necessary steps to protect such trade secrets if you have any.
4. Identify key trademarks & major existing & future markets in which trademarks should be registered; implement a registration program to obtain timely protection in the relevant marketplaces; and review value of trademarks to maintain or abandon.
5. Identify and protect domain names
6. Protect trade secrets through non disclosure agreements and other measures
7. Adopt appropriate “contribution policy” (license v. assignment)

- Identify business model
- Identify critical IP rights
- Develop IP strategy for protecting your products
- Develop IP strategy to challenge your competitors
- Ensure that IP provides “unfair” competitive advantage