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## Open Standards - Open Source

**The Business, Legal, and Technical Challenges Ahead**

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# Open Source: An Alternative Understanding

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# Why is Open Source Succeeding?

- Open Source is an unorthodox software development model
- Few ever expected it was going to work
- No one really understands what is going on even now

# Why is Open Source Succeeding?

- But Open Source must be fulfilling some basic economic need to be gaining market share
- Every major IT vendor has an Open Source strategy
  - Oracle, IBM, HP, Dell, Intel, Sun
  - Even Microsoft

# Existing Intellectual Property Laws Create The Problems

- For all the wealth that the proprietary software industry has created, it has also created problems
  - Monopolies-- IBM before, Microsoft now
  - Anti-competitive lock-in situations
  - Interoperability problems
  - Probably inherent result of the network effects of infrastructural software
- The problem could be that the existing legal regime doesn't set the proper balance between the rights of users and producers

# Existing Intellectual Property Laws Create The Problems

- It is arguable that Open Source really is just a reaction to laws that favor software producers too excessively for a correct economic solution
- So the market is finding a better solution

# Open Source Reaction to Excessive IPRs

- Open Source can be seen as private contracting solution to correct the imbalances
  - e.g., Open Source licenses like the GNU GPL/BSD

# Open Source Reaction to Excessive IPRs

- Open Source may just be saying that one size doesn't fit all in intellectual property
  - That software is different from books, music, or movies
  - That giving rights for 95 years on infrastructural software is just too much
- So much, too much that zero years is better



# Open Source May Be Transitional

- Now, people who think that incentives are important for intellectual property creation may still be right
- Open Source, I think, only proves that 95 years is wrong
- But I think that it doesn't prove that something more closely tied to software product cycles of 3-10 years is not better than zero

# Open Source May Be Transitional

- As a result something between 0 and 95 years may be best
  - It may not create the vendor lock-ins that everyone, especially governments around the world, fears as we move towards a cyber-centric world
  - It may create a more competitive software industry
  - But it may also give the incentives for creation that traditionalists believe are required
    - This may be the business model to pay the developers that Open Source currently lacks

# Open Source May Be Transitional

- If legislatures can't re-adjust the IPRs in software to appropriate levels
  - And they will likely be lobbied heavily to not do so by some incumbents
- Private contracting solutions may do it
  - Like we have already seen with Open Source: GPL/BSD
- If Open Source can reduce traditional IPRs from 95 years to 0
  - They can also re-formulate the licenses to reduce to 3-10 years, if that is a better solution

# Open Source May Be Transitional

- So, a middle ground between traditional IPRs and Open Source may be where we are heading
- Some groups are already proposing such solutions
- Time will tell where all of this will end up

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