

M&A in the US

EOLE, Paris

Phil Odence, VP of Business Development
Black Duck Software

October 12, 2012



Agenda

- Introduction
- OSS in Software Development
- M&A Practices
- Q&A

Black Duck Overview

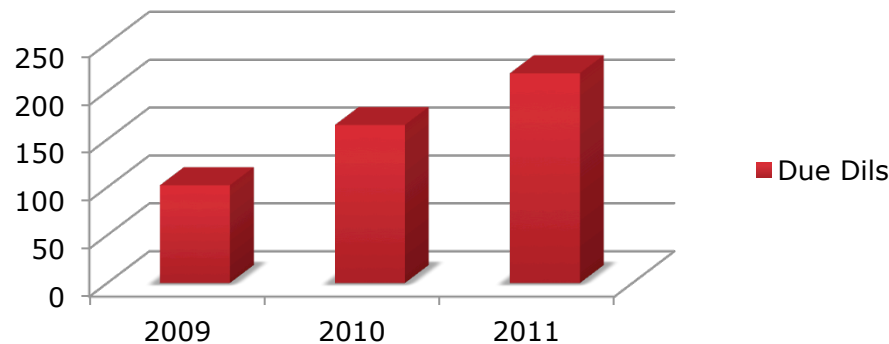
- Black Duck Software is the leading global provider of open source governance products and services
- 1000 customers in 24 countries
- Like SAP, Oracle, Intel, Motorola, RIM, RBC, Fidelity, Accenture



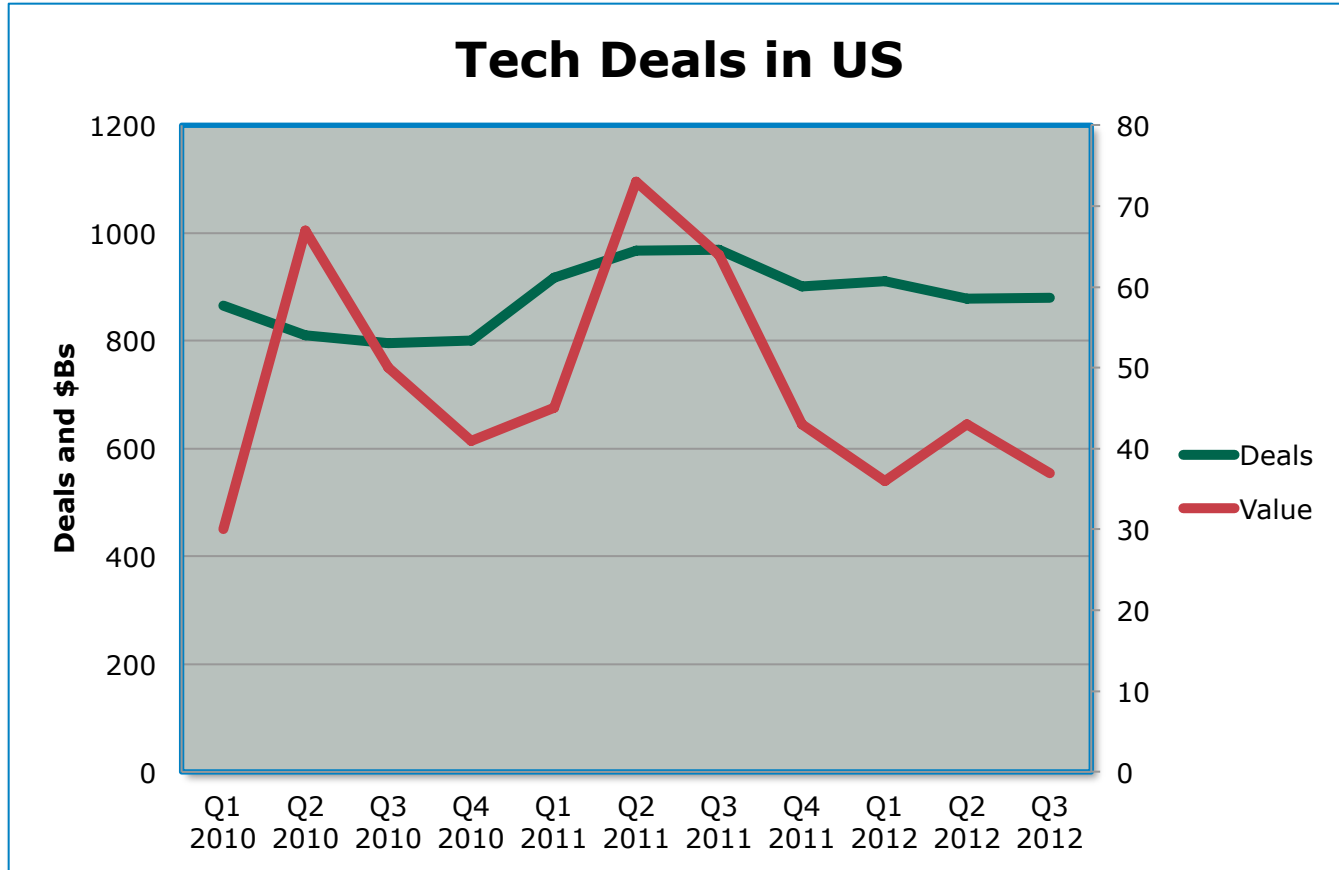
Black Duck in M&A

- Core Business
 - Software and services to help companies manage FOSS use.
- M&A
 - 15% of business is M&A due diligence: licenses, crypto, quality, security
 - Approaching \$100B in total audited deal value
 - Large companies (e.g. SAP, Oracle, Accenture) rely on Black Duck audits for every acquisition
 - Black Duck Certified Legal Professionals program

Audits



Deals



First of all...

“Software is Eating the World”

Marc Andreessen

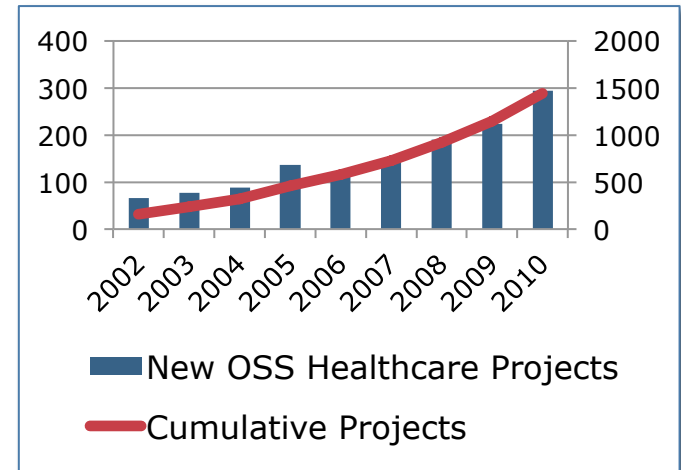
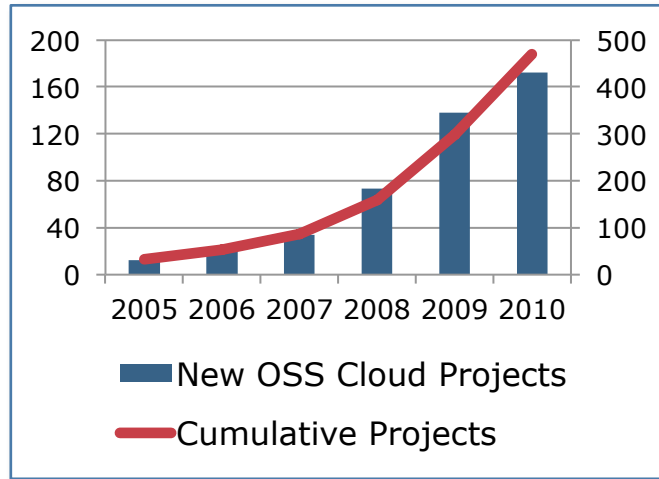


And there's a growing appetite for open source...

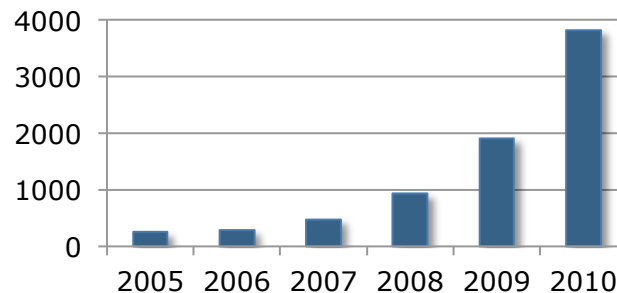
“Open source is ubiquitous, it's unavoidable....having a policy against open source is impractical and **places you at a competitive disadvantage**”

Mark Driver, Gartner

Wherever Software is Hot, Open Source is Hot



New Mobile OSS Projects



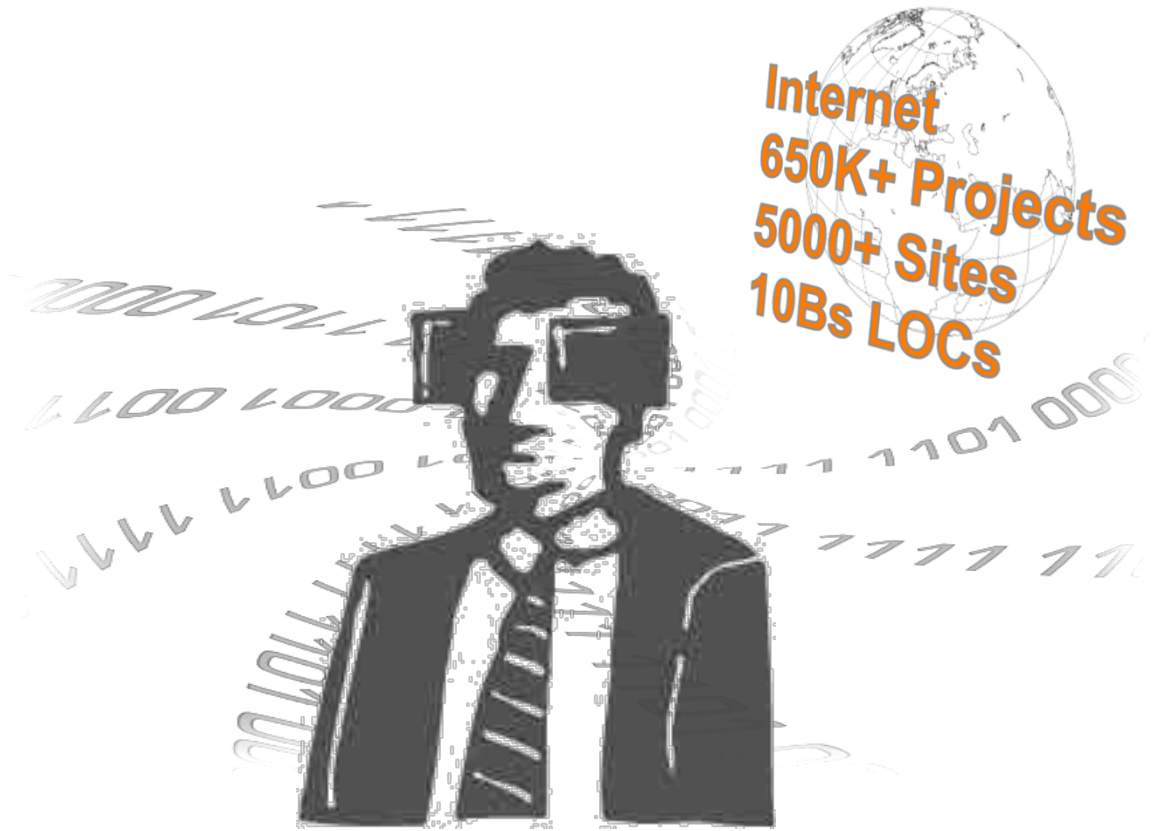
There are many paths for open source to sneak into a code base...and not just big chunks



- Individuals
- Universities
- Corporate Developers

Fundamental Industry Challenge

- “Managing Abundance” when every developer with a browser has instant access to...



The Good News / Bad News

Gartner

Research

Publication Date: 24 January 2011

ID Number: G00210068

Survey Analysis: Overview of Preferences and Practices in the Adoption and Usage of Open-Source Software

Laura F. Winkler, Rob Igou, Zeynep Babal

Gartner conducted a primary research survey of 547 IT leaders in organizations (excluding technology and service providers) in 11 countries in the second half of 2010. The goal was to determine current and future open-source software (OSS) adoption and usage habits. Results suggest that organizations continue to focus on OSS as a method to lower costs; however, OSS usage gains increased respect over previous survey results as a key element in corporate business strategies.

Key Findings

- All responding organizations deploy OSS in one of the following methods:
 - Executed in some department for specific requirements
 - Consistently used in all departments throughout the organization
 - Strategically used to gain competitive advantage
 - Used only as prototype to prove value
- More than half the organizations surveyed have adopted OSS solutions as part of their IT strategy, with nearly one-third citing benefits of flexibility, increased innovation, shorter development time and faster procurement processes. Lower total cost of ownership was a key driver.
- The top corporate-wide Gartner-defined key initiatives supported by the use of OSS are: (1) data management and integration, and (2) application development, integration, architecture, governance and/or overhaul.
- Only one-third of responding organizations have a formal OSS policy in place. The remaining respondents indicate no policy or have an informal process for approving OSS adoption.
- OSS makes up nearly one-third of responding organizations' overall enterprise software portfolio (applications and infrastructure), which is interestingly about the same as the proportion of internally developed software.
- Nearly half the respondents have investigated OSS because they believe a strategic portion of their business can be monopolized by one or two vendors.

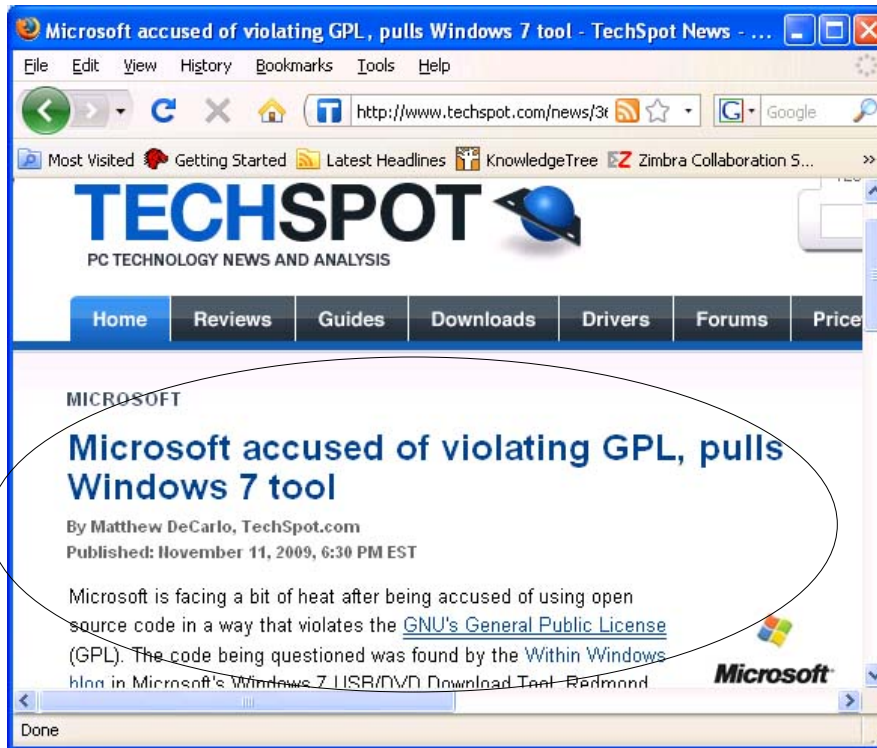
© 2011 Gartner, Inc. and/or its affiliates. All rights reserved. Gartner is a registered trademark of Gartner, Inc. or its affiliates. This publication may not be reproduced or distributed in any form without Gartner's prior written permission. The information contained in this publication has been obtained from sources believed to be reliable. Gartner disclaims all warranties as to the accuracy, completeness or timeliness of such information and shall have no liability for errors, omissions or damages of any kind arising from the use of the information. The opinions expressed herein are those of Gartner's research organization and should not be construed as statements of fact. The opinions expressed herein are subject to change without notice and should be confirmed by independent sources. Gartner does not provide legal advice or other professional services. Gartner may be contacted for more information on Gartner research. Gartner's Board of Directors includes firms and funds that have financial interests in entities covered in Gartner research. Gartner's research may include certain managers of these firms or funds. Gartner research is produced independently by its research organization without input or influence from these firms, funds or their managers. For further information on the independence and integrity of Gartner research, see "Qualifying Principles on Independence and Objectivity" on its website, <http://www.gartner.com/tech/qualifyingprinciplesonindependenceandobjectivity.pdf>

**Average
Enterprise uses
29% open
source code.**

**50% of
companies will
face challenges
due to lack of
FOSS policy and
management**



Software Supply Chain Challenges: Even the Best Software Organizations Struggle

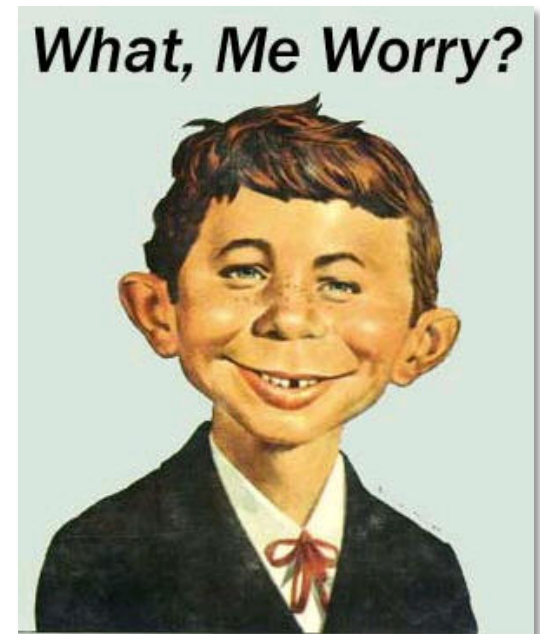


The Windows 7 USB/ DVD Tool Violated GPLv2 License

- Code was “multi-source,” including code from an external supplier with OSS
- Microsoft pulled the product from the Microsoft Store, then had to make the source code and binaries available

Open Source in M&A: *Why acquirers worry*

- Concerns
 - Inheriting problems
 - Delaying revenue while addressing
- Most companies don't know what's in their code...often times despite believing they do
- According to analysts, <50% of companies even have open source policies
- What Black Duck sees in M&A
 - >20% of code we scan is open source
 - >90% of target code bases contain undisclosed open source code
 - >50% of code bases contain unknown or reciprocal licenses



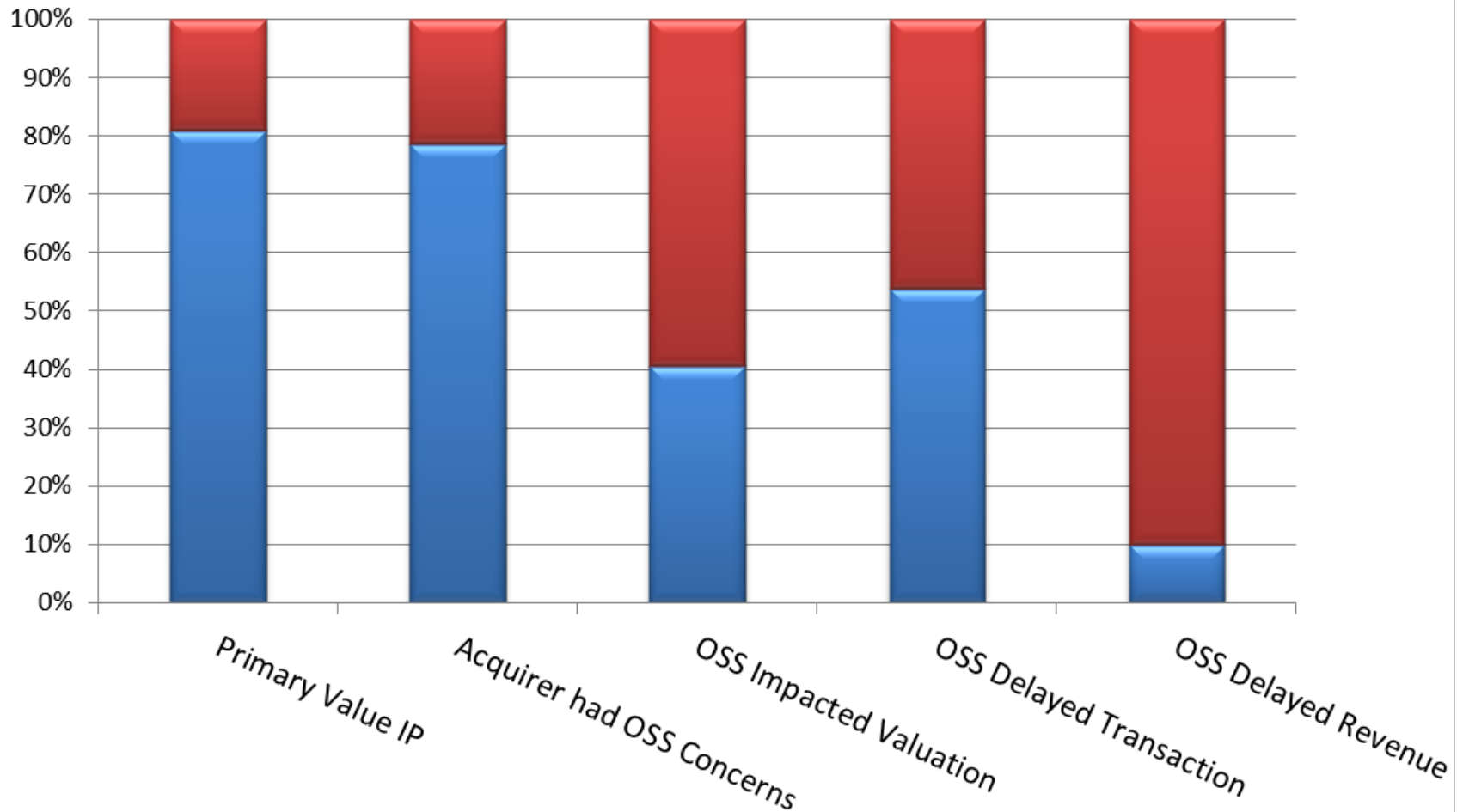
Hierarchy of Tech M&A Issues (partial list)

- Legal Issues
 - IP Issues
 - Copyright/Licensing
 - Open Source
 - Patents
 - Open Source
 - Export Control
 - Open Source
- Technical Issues
 - Security
 - Open Source
 - Quality
 - Open Source
 - Supportability
 - Open Source
- Etc.



M&A Experience (Attorney Poll)

■ Yes ■ No

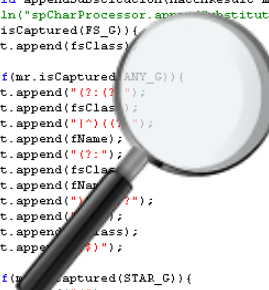


121 responses from Black Ducks Legal Certification Program



Acquirer's Need to Understand...

- What open source components are in the target's code? Under what licenses? How they are used?
 - GPL
 - Fit with acquirer policies vis a vis usage
 - Obligations and how completely met
 - Extent of remediation required
- How the target knows
 - Knowledge
 - Policy
 - Process
- Approaches to assessing
 - Interviews/Inspection
 - Tools
 - Third-Party Services



```
private static final Replacer spCharProcessor=new Replacer(
    spCharPattern,
    new Substitution() {
        public void appendSubstitution(MatchResult mr,TextBuffer dest)
        //System.out.println("spCharProcessor.appendSubstitution(): "+((MatchResult)mr));
        if(mr.isCaptured(FS_G)){
            dest.append(fsClass);
        }
        else if(mr.isCaptured(ANY_G)){
            dest.append("(?:(");
            dest.append(fsClass);
            dest.append(")~)(");
            dest.append(fName);
            dest.append("(?:(");
            dest.append(fsClass);
            dest.append(fName);
            dest.append(")?");
            dest.append(fsClass);
            dest.append(fsClass);
            dest.append(fsClass);
        }
        else if(mr.isCaptured(STAR_G)){
            dest.append("(");
            dest.append(mfsClass);
            dest.append(")*");
        }
        else if(mr.isCaptured(QMARK_G)){
            dest.append("(");
            dest.append(mfsClass);
            dest.append(")?");
        }
        else if(mr.isCaptured(SPCCHAR_G)){
            dest.append("\\");
            mr.getGroup(SPCCHAR_G,dest);
        }
        else if(mr.isCaptured(NONROOT_G)){
            dest.append("(?:\\.\\.\\.");
            dest.append(fsClass);
            dest.append(")?");
        }
    }
);

private String str;
private String root;
private File rootFile;
```


Why Targets Need to Care

- Deals get delayed for remediation
- Valuation or financial terms change
- Deals go south

He who sells what isn't his'n,
Must buy it back or go to prison.

- Daniel Drew,
19th Century American Financier



What's a startup to do with respect to OSS?

- No company is too small to need governance
 - Policy – Can be simple...red/yellow/green
 - Process – Czar, Catalog, Approval
 - Education – Developers are your firewall
- Implementation
 - Define Policy/Process
 - Baseline
 - Education/Rollout
- Scan before selling





Summary

- Unmanaged use of open source can be risky particularly when it comes to M&A
- There are many paths for unknown components into a code base
- OSS due diligence helps companies avoid the risks
 - Analyze contents using a comprehensive KnowledgeBase
 - Provide a comprehensive view of what's in the code
- Black Duck is the trusted provider of OSS due diligence services to the world's best companies



To learn more

- <http://www.blackducksoftware.com>
- podence@blackducksoftware.com
- <http://www.networkworld.com/community/blog/the-weirdest-software-licenses>



Android: Opportunity and Complexity A Case Study in Open Source Compliance Management

This Webinar, presented by **Black Duck Software** with **Mark Radcliffe** will review:
the Android project, its structure and the components it
the implications of typical development and integration
associated legal obligations
will conclude the webinar with suggested best practice
compliance. **Register Now!**
View the Webinar Library.

Open Source Resource Center

Presented by Black Duck Software

Overview

- Learning Center
- Upcoming Events
- Data
- Resources

Welcome to the Open Source Resource Center

The Open Source Resource Center (OSRC) is dedicated to providing important information about open source software, a driving force behind innovation.

The OSRC provides:

- Opportunities to [learn about open source software](#)
- Open source community [resources](#)
- The most up-to-date data on [open source projects](#) and [licenses](#) from Black Duck's [KnowledgeBase](#), the industry's most comprehensive database of open source software
- Information about the open source industry standard, [SPDX](#)

The OSRC is hosted by [Black Duck Software](#).

What's going on in Open Source #opensource

arduinomarts News: OSHWCon 2011 - Open Source Hardware, Electronics and Robotics Convention in #madrid #arduino #opensource <http://t.co/wEKVXFf> about 1 hour ago · reply · retweet · favorite

tbirdymru What do Google, Open Source Software and Digital Literacies have in Common? #digitl #opensource #ukedchat @scoopit <http://t.co/LekFa96> 7 hours ago · reply · retweet · favorite

twitter Join the conversation

