M&A in the US

EOLE, Paris

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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

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**Audits**

![Bar chart showing audits from 2009 to 2011](chart.png)

- Due Dils
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 OSS Cloud Projects
- Cumulative Projects

- New OSS Healthcare Projects
- Cumulative Projects

- 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

YOUR COMPANY – TOOLS, PROCESSES
Fundamental Industry Challenge

- “Managing Abundance” when every developer with a browser has instant access to...
The Good News / Bad News

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)

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
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
OSS Due Diligence Process

- Early Communication
- Negotiation and Logistics
- Assessment
- Negotiation
- Remediation

Know Your Code.
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

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