

OPEN-SOURCE SOFTWARE IN THE EUROPEAN UNION

Executive Summary



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EXECUTIVE SUMMARY

Regulation No 386/2012 entrusts the European Observatory on Infringements of Intellectual Property Rights (the Observatory) with tasks related to improving the understanding of the value of intellectual property rights (IPR) and fostering the exchange of information on new competitive business models which enlarge the legal offer of cultural and creative content. Within those remits, the Observatory prepares research reports that provide information on various contexts of IPR use and its importance to individual firms and the European economy. This report focuses on open-source software (OSS) as it is often regarded as an alternative way of organising innovation activity in the software industry.

The present report analyses the scope of use of OS licences by commercial firms in the European software sector and focuses on the way those firms use formal IP rights to sustain their business models involving software licensed under OSS terms.

OSS emerged as a reaction to the evolution of the software industry, the specificities of innovation in this sector and the uncertainties regarding IPR protection of software. The incremental nature of software innovation facilitates reuse of code. The importance of network economies promotes solutions increasing wide dissemination of software. The popularity of OSS has its roots in the cultural preference for software sharing among the early software developers' communities. Software also has some specific features which do not always fit well within the current system of IPR protection. This may result in shifting the business focus from software as such to products and services complementing software. It has consequences for the business models of software firms and the way they use IPR for sustaining those business models.

The main contribution of the present study is an analysis of the results of a survey conducted on a sample of 1 364 firms with seat in the EU and active in the software sector. This analysis shows that OSS has become an integral part of the business models of software firms. Most of these firms encourage their employees to develop or use software licensed under OSS licences during working hours. In recent years most firms taking part in the survey either maintained or increased their involvement in OSS development or use. OSS brings some tangible benefits, not limited to lower costs only. By embedding OSS software into their business models firms may get strategic benefits related to the wider dissemination of software and a larger knowledge pool they can tap into. The survey data shows that OSS does not limit but rather widens the business opportunities for software firms and most of them treat OSS as an opportunity rather than as a threat to their business model. The entry rate into industry is high and many newly created firms indicate the high importance of OSS for their decision to start a business. For more than one third of young OSS-developing or using firms, the existence of OSS was a crucial consideration for starting activity.

Firms allowing their employees to engage in OSS development during working hours are somewhat more sceptical as regards the current system of IPR protection than their counterparts less engaged in OSS. However, informal and formal IP protection methods are important for their ability to convert market opportunities associated with OSS into profitable business models. Survey responses show that the higher the share of revenue stemming from the sale of licences among OSS-developing firms, the more intense use of proprietary licences is made. Firms for which the share of revenue from the sale of licences is relatively lower are more likely to use non-proprietary licences for software distribution. Their incentives for contributing to OSS hinge, however, upon the protection of IP embedded in services and products

complementing OSS. Among those firms, the most popular strategy is based on the development of services complementing OSS or on embedding software in tangible products.

There are some differences in the use and assessment of the effectiveness of various measures of IP protection depending on the involvement in OSS. While non-OSS firms tend to rely relatively more on patents, trade secrets and designs, OSS-developing firms rely more on copyright, internet domain names and informal measures of IP protection. The use of trade marks is almost the same among different groups of firms. The difference between firms is not as evident in the assessment of the effectiveness of various IP protection measures. In fact, among OSS-developing firms the share of firms assessing copyright, trade marks and designs as effective measures of protection of their products and services is higher than among non-OSS firms. This suggests that firms engaged in OSS development are able to forego the proprietary licensing for software by relying on IP protection for other parts of their business models.

Analysis of the survey responses suggests that firms' engagement in OSS is driven by pragmatism related to its lower cost and the strategic advantages stemming from the decentralised process of OSS development, rather than by ideological motives. Development and use of software licensed under OS benefits firms by opening up new business opportunities based on services and products complementing OSS. It is also beneficial to OSS communities as the commercial interest of firms provides for more stable and long-term perspectives for OS software development.

OSS governance and the effectiveness of business models based on OSS rely heavily on the users' compliance with OSS licence terms and copyright provisions. This bears out the versatility of the current IPR system that enables the emergence of new innovation governance methods contributing to the wider dissemination of innovative products while preserving the ability of firms to benefit from their innovations.



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