Legal infrastructure for open source projects

Stewardship and the role of FOSS legal umbrella's

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STEWARDSHIP

- Software licenses are what makes everything happen in FOSS

- But a community may decide/need to add another license on top of an existing license at some point

  - Newer version of the current license

  - Necessary for inclusion in specific environments (like iTunes)

  - (Partially) merging with another free software/open source project with an incompatible license

  - Who knows what legislators come up with in the future?

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Part of a larger problem

- What happens in the long run?
  - Scaling projects up is a known hard problem
  - And not just for individuals

    a corporate/'embedded' open source project with a known group of collaborators doesn't always turn into a comprehensive, cooperative program supported by a lively ecosystem either

    (but at some point all projects have to mature beyond the initial stage – or perish)

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Project stage | Mature stage

- predefined lifetime

- ad hoc involvement

- 'pioneering'
  - experimental/pilot

- meet short term needs
  - feature development
  - work in progress

- open ended

- open community

- 'proven technology'
  - production usage

- long term needs
  - solidifying technology
  - software engineering
  - security hardening

One Foundation per Project?

- Some serious overhead and responsibility
  - legal/administrative
  - organisational
  - financial
- Steep learning curve for people involved,
  on top of the project responsibilities
- Easy to make mistakes

From the Outside

- Netherlands based foundation

- Established in 2016

- Experienced board with veterans from free sofware/open source, e-science, internet community and digital heritage

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Mission

The foundation strives for a **fair and balanced global information society** in which individuals can collectively *scrutinise*, *reconfigure* and *improve* upon the technology and informational resources they depend on; and to make that technology and those resources *secure*, *reliable*, *transparent* and *inclusive* and **to enable human innovation at the widest possible scale**, with the express intention to strenghten the individual in their humanity and to enable them to participate in all facets of modern life – whether *social*, *cultural*, *economic*, *private* etc. – under conditions of their own choosing, and in full understanding of and control over its workings, and all that relates to the beforementioned or could be beneficial to it, all in the broadest sense of the word.

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[The Commons Conservancy]

- An 'organisation hypervisor' that can spawn and support *virtual* open source foundations

- Each Program runs independently from all the others, in near-perfect isolation

- Each Program determines its own 'operating environment' (such as statutes, CLA/FLA, etc) with sane templates/defaults provided, and has full connectivity to the outside (own site, etc)

- Long term vision, should still exist 75 years from now

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Separation of concerns

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- independent programme governance
- maintain a shared road map
- a neutral, trustworthy vault for shared intangible assets (such as source code)
- advanced legal infrastructure
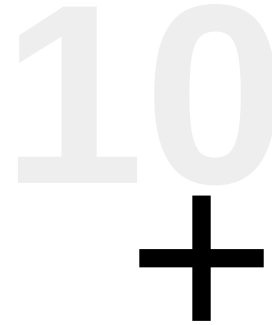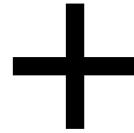
- professional fund management
- benefit from reputation and tax facilities of existing charitable organisation (established in 1989)

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commons caretakers

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- a not-for-profit company (Fiscaal Fondsenwervende Instelling)
- can facilitate and support financial and other legal transactions on behalf of Programmes

- ...

...ment
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Get rid of the money

- No money = no risk of financial contamination between programmes.

- Donations are handled completely externally

    - Audited, professional financial environment

    - open mechanism invites fresh blood from outside

- Promiscuous: you choose where your money is handled best

Stewardship

- [The Commons Conservancy] is designed to be a very safe place for contributors to keep IP of source code + other assets – if so desired

- License agnostic.

    - Limited to Free Software/Open source efforts

- Up to the Program, may also decide to completely block future license changes or set very specific conditions

And for those looking ahead

- No lock in
  - A Programme is free to go at all times to 'graduate' to a dedicated legal entity (e.g. run its own 'bare metal' organisation)

- Also not financially
  - Feel free to shop around the globe for whomever
    - ... has the best fit with (fiscal?) specifics of donors and community
    - … delivers the best operational support and value add
    - … has a custom fit for specific needs

Benefits for Organisational donors

- "Do the right thing", socially responsible contribution

- Efficiently pool resources with others that have an interest in the technology and its goals

    - (public, private, academic, civil society, ..)

- Collective responsibility helps mature roadmaps and community

- No 'end of budget year' issues

    - donations can have a multi-year release span

    - money stays in place until needed, like a Swiss bank account

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Benefits (continued)

- Effectiveness guaranteed
  - Donations are made only after achieving the expected results
- Non-commercial stewardship gives users much more guarantees and thus creates greater trust
- For some, partial tax return on their donation
- Built trust through **peer review mechanisms** and full **transparency** instead of bureaucracy
- Designed to allow for diversity

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Terms of reference

- Open to anyone acting in the public interest
  - Initially focus on professional internet-related projects with some scale
- Constructive, positive and inclusive approach
- Every Program appoints an entry point for Responsible Disclosure and Accessibility issue handling

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Summary: light-weight governance exists

- Apart from setting up your own foundation, you can opt for light-weight solutions like The Commons Conservancy or Center for Cultivation of Technology

- This is warmly recommended to keep your future flexibility
  - Very fast and flexible (in case of TCC, 'pick your own governance' model)
  - License agnostic (mix of licenses is not a problem)

- Separation of concerns or one-stop-shop:
  - Safe home for resources and structure for collaborative decision making

Questions?

Just let us know...

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