

Date: Wed, 25 Oct 2006 10:55:36 -0400
From: "Joseph Hardin" <joseph.hardin@gmail.com>
Subject: Re: Licensing and IP management futures
In-reply-to: <C164BF5A.1AA80%chris.coppola@rsmart.com>
To: "Chris Coppola" <chris.coppola@rsmart.com>
Cc: "Sakai Advocacy" <advocacy@collab.sakaiproject.org>,
"Kuali Extended" <kuali@oncourse.iu.edu>, SAKAI <sakai-board@umich.edu>

Thanks for providing this start for the Sakai conversation on this, Chris. I was also at this workshop, and thought it was an interesting experience. I think we in Sakai need to think about this and look at the various alternatives. We haven't had this open discussion in the Sakai Community yet.

One way forward would be for Sakai to adopt the Apache 2.0 license unchanged as its outbound license, and treat the special cases, currently MIT and UCal, as we treat all the other 30 or 40 or so licenses from 3rd party software contributors that are part of the Sakai distribution. That way we can move forward with a clean Apache license for the distribution and provide the strongest encouragement to others to take the strongest possible (in relation to their CLAs) position, falling back when we need to. We would proceed then with the discussions with the Apache Foundation on making needed changes for the next generation license. People should be aware that an Apache licensing person was there and was interested in pursuing this with us, so this is a good thing.

Another alternative would be to drop patent wording altogether in the outbound license and go with the BSD license, as DSpace does.

One of the key issues in all this is that universities, unlike most companies and unlike individuals, can not really commit to not coming after someone who might violate a patent that the university holds. This is true for a couple reasons, and Barnaby can get this straight, but one of the reasons, the one raised by MIT, is that MIT enters into exclusive licensing arrangements around its patents, and the licensee can do pretty much what they want with the patent they licensed from MIT, so any guarantees MIT might have made become moot. So the guarantees of the Apache license regarding not pursuing patent infringements on patents held by contributors can't be met by some contributing universities.

Now, I am not sure what the right way to go here is. I want to keep patent language in the CLAs and license agreements, I think. On the other hand, as we are learning from our experiences fighting the BB patent, these license agreements are not necessarily at the center of that fight. They are useful in educating our contributors, and that may well be enough to make them something we want, but, especially with the rewording that came out of this meeting, loosening the protections even more, there is a legitimate question as to whether or not it is worth the trouble.

This is one of the questions we have here: why go to all this effort if this is not really of high value to the Sakai Community. The DSpace community requires no CLAs from its contributors, uses the BSD license, and so avoids all this friction. But, they are not necessarily helping in the education of their community around patent concerns, either.

I do think that what we spent much of the time at this meeting talking about, patents, and protection therefrom, may well be better approached

from other directions.

Joseph

On 10/25/06, Chris Coppola <chris.coppola@rsmart.com> wrote:

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> Last week I was fortunate to have been among a talented and committed
> group at the Licensing and Policy Summit in Indiana. The participants were a
> multinational group representing institutional counsel, technology transfer
> officers, policy makers, foundation officers, open source legal experts, and
> community source project practitioners. Visit the Summit website (*
> <http://summit2006.osnext.org>*) for a list of participants, background on
> the event, discussion of topics, and notes from the meeting.

>
> The model for IP management we have pioneered for Sakai & Kualu (following
> in Apache's footsteps) and how to evolve our practices were the center of
> conversation. The primary purpose of the meeting was to begin developing a
> complete framework for intellectual property in higher education that is
> favorable to open source projects. Key objectives of the framework are:

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> 1. Common recommendations on licensing and patents for institutions
> of higher learning internationally.
> 2. Institutional policy changes to be more open source friendly
> (long term goals).
> 3. Near term improvements to inbound and outbound licensing to
> reduce contribution and adoption friction.

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> One of the key drivers for change is the evolving debate regarding the
> terms of the Educational Community License (ECL) which is our current
> license. Some interpretations of the license are not consistent with our
> licensing objectives. Similarly, many view that patent license language is
> an important part of modern software licenses and this was the collective
> belief of the summit participants.

>
> One important tangible outcome of the meeting is to adopt a strategy of
> aligning with the legal framework of the Apache Software Foundation (inbound
> and outbound license) if possible. This will likely take a year or so of
> working with the Apache Software Foundation and so we developed a good
> interim step.

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> In the coming weeks and months we will finalize a draft of what we are
> currently calling "ECL 2.0" which we drafted at the Summit. The draft is
> essentially a copy of the Apache 2.0 license with a change to the outbound
> patent license that is essential to the patent policies at a number of
> universities. This change is symmetrical with the inbound contribution
> agreement (Sakai/Kualu CLA) which has modified patent rights. In the next
> week or so this draft will be finalized and we will work toward having it
> OSI approved. Assuming that we are able to get it OSI approved and this
> meets the needs of the community, we will probably move Kualu and Sakai to
> this new license.

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> Parallel to that effort, we will engage the Apache Software Foundation to
> help craft an Apache 2.1 license that suits higher education. If we are
> able to succeed in uniting the needs of higher ed licensing with some
> licensing evolution that Apache is considering, we will then adopt Apache
> 2.1 which should be only modest improvements over our interim ECL 2.0.
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> Chris.
> --
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Attachments:

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References: <C164BF5A.1AA80%chris.coppola@rsmart.com>