2021 BLOCKCHAIN WEBINAR SERIES

HOW DO OPEN SOURCE LICENSES AFFECT YOUR INTELLECTUAL PROPERTY RIGHTS?

Usman Sheikh, Partner & National Head – Blockchain & Smart Contract Group, Gowling WLG

Viona Duncan, Partner & Co-Chair of Global Tech, Gowling WLG

Roch Ripley, Partner & Head of Vancouver Intellectual Property Department, Gowling WLG

Lesley Boveri, Software IP Counsel, SAP

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LEGAL DISCLAIMER

- The presentation today is not intended as legal advice.

- Because this is a high level overview, it is impossible to cover all relevant details, and your available rights and remedies will depend on the unique facts of each situation, your applicable contract or subcontract, or the nature of your project.

- For specific advice, please contact your qualified legal counsel before making any decisions or taking any action. This is of particular importance as every province and territory has its own legal regime.

- As you know, the situation is extremely fluid and is changing on a daily basis. As things evolve, your best course of action could also evolve. Please follow up to date and reliable sources for your information.

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SPEAKERS

USMAN SHEIKH

Partner & National Head – Blockchain & Smart Contract Group, Gowling WLG

✉ usman.sheikh@gowlingwlg.com

📞 +1 416 862 3627

VIONA DUNCAN

Partner & Co-Chair of Global Tech, Gowling WLG

✉ viona.duncan@gowlingwlg.com

📞 +1 519 575 7516

ROCH RIPLEY

Partner & Head of Vancouver Intellectual Property Department, Gowling WLG

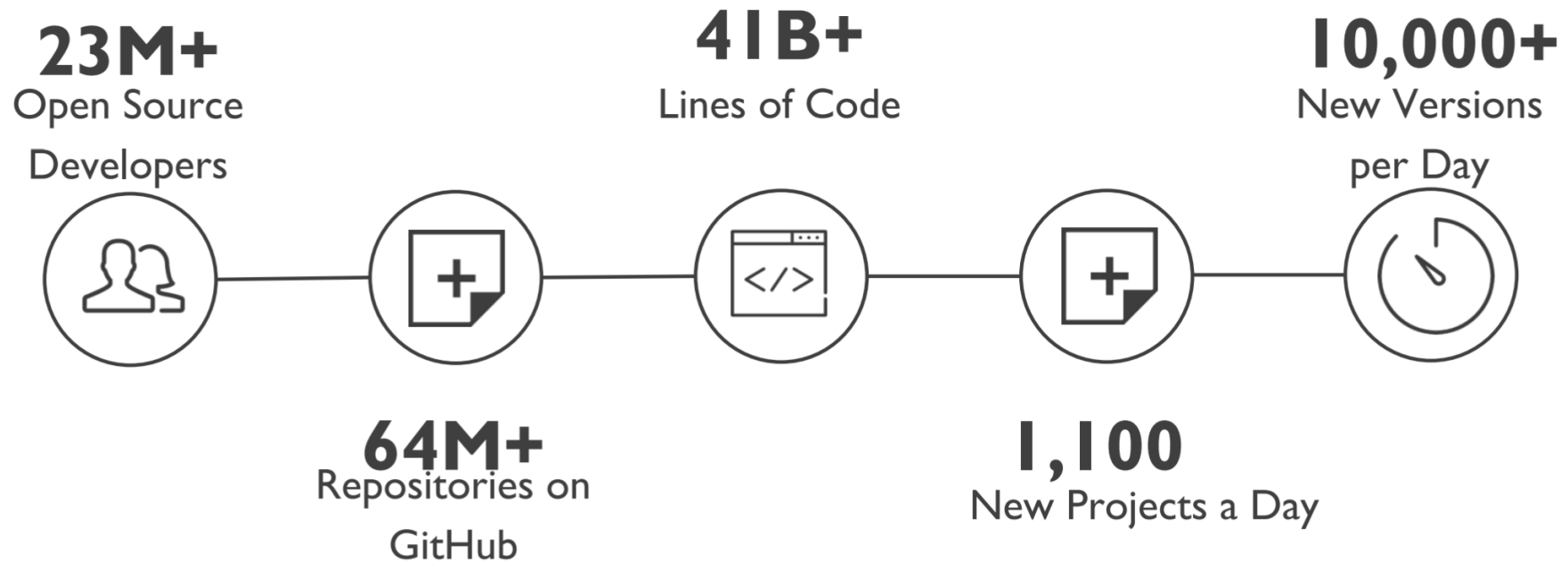✉ roch.ripley@gowlingwlg.com

📞 +1 604 443 7632

LESLEY BOVERI

Software IP Counsel, SAP

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WHAT IS OPEN SOURCE?

OSS (Open Source Software) is defined in the technology industry as software licensed under any form of open source licensing, including a license agreement that conforms to the definition set by the **Open Source Initiative** (see Open Source Initiative: The Open Source Definition (Annotated)).

OSS licensees are typically permitted to use, copy, modify, and redistribute source code at no cost, subject to complying with the disclosure, use, distribution, and other relevant obligations and restrictions set out in the license.

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23M+
Open Source Developers

64M+
Repositories on GitHub

41B+
Lines of Code

1,100
New Projects a Day

10,000+
New Versions per Day

No company has a chance to compete with the open source ecosystem in the long run.

Source: GitHub, Sonatype

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WHY WOULD A COMPANY USE OPEN SOURCE?

- **To develop new products at a reduced cost.**

- **To build and strengthen current products.**

- **As an alternative or to complement proprietary software.**

- **To leverage innovation.**

- **To drive competition in the market.**

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TWO CATEGORIES OF OPEN SOURCE LICENSES

OSS licenses vary in many ways but typically are grouped into two distinct categories:

- **Permissive** OSS licenses.

- **Restrictive** (or copyleft) OSS licenses.

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WHAT IS A PERMISSIVE LICENSE?

Permissive licenses:

- Allow the OSS licensee to freely amend, adapt, and combine OSS code with proprietary code to create derivative works without significant restrictions on the changes to the OSS code or how the derivative works can be licensed afterwards.

- Usually only require that any distribution of the original OSS be on the same OSS terms as those on which it was provided.

- Are designed to be compatible with commercial proprietary software licenses.

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WHAT IS A RESTRICTIVE LICENSE?

Restrictive licenses:

- Impose licensing restrictions if the licensee amends, adapts, or combines the OSS with any other software to produce a derivative work.

- Requires derivative works to be open source and the source code to be made available under the original restrictive or copyleft license.

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COMMON OSS LICENSES

License	Permissive or Restrictive?
Apache License 2.0	Permissive
BSD License 2.0	Permissive
GNU General Public License (GPL) 2.0	Restrictive
GNU General Public License (GPL) 3.0	Restrictive
GNU Lesser General Public License (LGPL) 2.1	Restrictive
GNU Lesser General Public Licenses (LGPL) 3.0	Restrictive
MIT License	Permissive
GNU Affero General Public License (AGPL)	Restrictive +

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OSS RISKS

- A company's lack of understanding of the risks of using OSS and failure to adopt policies that ensure its compliance with OSS license terms can have significant consequences. For example, it could:

- Allow competitors to gain access to proprietary source code.

- Result in the loss of valuable intellectual property rights.

- Place the company at risk for contract and copyright infringement liability that can result from the indiscriminate use or distribution of OSS.

- Cause reputational damage and business continuity issues.

- Impact new customer relationships.

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OSS IN M&A

Open source issues can cause overall deal issues:

- **Delay signing/closing**

- **Change deal economics/or liability**

- **Deal certainty/kill the deal**

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OSS IN M&A

Ways to address open source issues:

- **Remediation covenants and closing conditions**

- **Specific indemnities**

- **Escrows**

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OSS IN M&A

Best open source practices for companies preparing for M&A transactions:

- Conduct periodic in licenced software audits and code scans

- Develop written policy and procedures for use of open source

- Ensure contracts contain provisions to provide appropriate protections

- Prepare for diligence and address red flags now
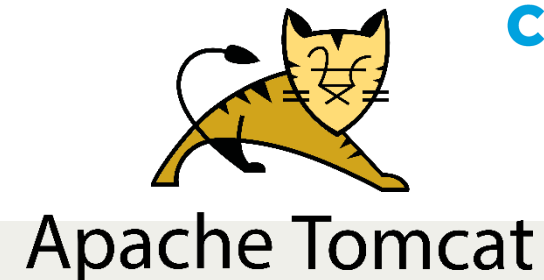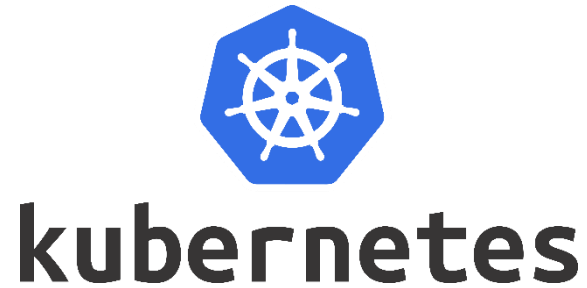
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CORPORATE PERSPECTIVES ON OSS

- **Formal Open Source Policy**

  o Management Buyin and Scope

  o Training

  o Use cases

- **Central administration and management of open source issues and compliance with OSS Policy**

- **Contributing to Open Source Projects**

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WHY DO COMPANIES DECIDE TO CONTRIBUTE THEIR IP TO OPEN SOURCE?

Drive technology adoption

Quick focus on a specific area

Build large-scale collaboration; community

High dissemination

Collaborate with partners; address a shared problem

Get influential through large user base

Build sustainable ecosystem

… and other strategic reasons.

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SHARING THE EFFORTS BY CONTRIBUTING FIXES AND FEATURES

SHARING THE EFFORTS BY DRIVING OUR OWN PROJECTS

Active SAP Open Source projects on public SAP GitHub

410

as of Nov 20th 2019

Commits to

57.000+

Commits to OpenUI5

53.600+

Gardener

CLA Assistant

Vulas

Sap Machine

UI5 Web Components

OpenUI5

Kyma

InfraBox

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OPEN SOURCE CONTRIBUTION PRINCIPLES – LEGAL
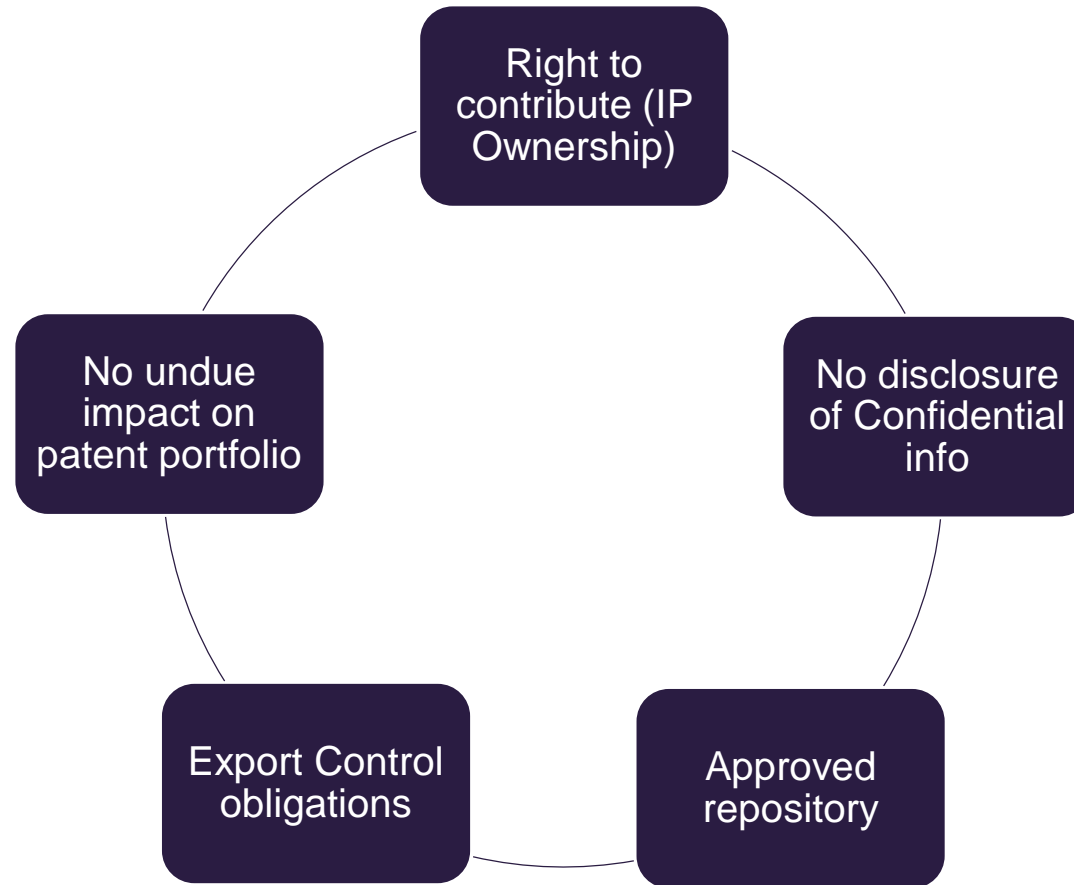
- Right to contribute (IP Ownership)
- No disclosure of Confidential info
- Approved repository
- Export Control obligations
- No undue impact on patent portfolio

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QUESTIONS?

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DON'T MISS OUR NEXT WEBINAR IN THE SERIES:

OCTOBER 14 | BLOCKCHAIN LITIGATION – LEGAL DEVELOPMENTS

INVITATIONS TO BE SENT SOON!

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