

# Co-existence, Co-opetition, and the Microsoft-Novell Agreement

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# Agenda

- **Microsoft's intellectual property strategy**
- **Some trends with commercial OSS**
- **Managing co-existence**
- **The Microsoft – Novell agreement**

# Managing IP Rights Software Product Development Process



# Microsoft's IP Strategy

- **Carefully manage** the code that goes into products
- **Secure protection** for innovations
- **License in** additional rights and **respect** the IP rights of others
- **License out** patents to others on commercially reasonable terms
- Stand behind our products with customer **indemnification**
- Promote effective **IP law reform and enforcement**

# Microsoft's IP Strategy in context

Microsoft was historically a trade secret reliant company

Increasing reliance on patents

- Substantial R&D investments
- More interdependent environment

IP Policy Launch (Dec '03)

- Reorientation of IP licensing and planning – sharing, not exclusive use of patents
- Microsoft is “open for business” for licensing IP, even for competitors and OSS vendors
- Trading patent rights like “currency”

Active licensing program

- Litigation?

# Open Innovation: A Shift In Innovation Paradigms From Closed To Open

(from Henry Chesbrough's "Open Innovation: The New Imperative for Creating and Profiting From Technology")

The sharing of knowledge and innovation through IP to foster economic growth and meet customer needs

## Closed Innovation

The smart people in our field work for us

To profit from R&D, we must discover it, develop it, and ship it ourselves

If we discover it ourselves, we will get it to market first

The company that gets an innovation to market first will win

If we create the most and best ideas in the industry, we will win

We should control our IP, so that our competitors don't profit from our ideas

## Open Innovation

Not all the smart people work for us. We need to work with smart people inside and outside the company

External R&D can create significant value; internal R&D is needed to claim some portion of that value

We don't have to originate the research to profit from it

Building a better business model is better than getting to market first

If we make the best use of internal and external ideas, we will win

We should profit from others' use of our IP, and we should leverage others' IP whenever it advances our own business

model

# Some IP trends with commercial OSS

- OSS software “free,” often bundled with proprietary software
- Business models that revolve around support, administration, consulting services, custom solutions
  - Desire to drive down cost of inputs (incl. IP rights)
  - Desire to exploit patents in value-added software
- Modifications of code restricted via service agreement
- Some licensing limitations enforced via trademark
- Related services: IP management, insurance

# Co-existence and IP in OSS

- Open Source and Proprietary Software may use different business and licensing models, but both live with a common set of intellectual property rules
- Both here to stay, there needs to be a way for both models to work well together
- Some efforts at managing co-existence
  - IP asset management and compliance
  - IP licensing/cross-licensing among competitors
    - Vendor to vendor agreements
    - Open Innovation Network - <http://www.openinventionnetwork.com/>
  - Vendor indemnification
  - Insurance and risk mitigation services (e.g., OSRM)
    - Aug. 2004: 283 patents “potentially” infringed by Linux
    - [http://www.osriskmanagement.com/press\\_releases/press\\_releases\\_080204.pdf](http://www.osriskmanagement.com/press_releases/press_release_080204.pdf)

# Co-competition and Microsoft

- **Agreements and/or partnerships with Microsoft**
  - OSS vendors: SugarCRM, JBoss, Zend
  - Traditional competitors: IBM, Sun, Nokia, Time Warner, RealNetworks, Yahoo
- **OSS Interoperability Lab at Microsoft**
- **Participation and contributions to Open Standards**
  - Open Specification Promise
- **Standardization of Office File Formats**
- **Microsoft postings to SourceForge.net (WiX, WTL, FlexWiki)**
  - Helping OSS developers build on Windows
- **Interoperability Vendor Alliance**

The image features a stylized globe background with a grid of latitude and longitude lines. A vertical band of color, transitioning from blue on the left to red on the right, passes through the center of the globe. Within this band, there is a detailed, white and red truss structure, possibly representing a bridge or a complex architectural element. The Novell and Microsoft logos are positioned in the lower right quadrant of the image.

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# Microsoft – Novell Agreement

- A bridge between the open source and commercial software worlds
- A model for respecting IP while also innovating on behalf of many customers with mixed source environments
- Responding to customer feedback:
  - Technical challenges of managing a heterogeneous environment
  - Vendors should resolve IP issues directly

# Technical Collaboration

- **Creation of a joint R&D Lab supported by Microsoft and Novell Technical Experts**
- **Microsoft and Novell technical experts will architect and test new software solutions and work with our customers and the community to build and support joint solutions**
- **The agreement focuses on three technical areas: Virtualization, Web Services for managing physical & virtual servers & Document Format Compatibility**
  - **Novell has already shipped translator for OpenOffice to use Open XML file format**

# Patent Cooperation Agreement

- The agreement offers several IP protection benefits to Novell and Microsoft customers as well as to the Open Source Software community
  - Microsoft and Novell provides coverage for respective customers for use of each others' patented intellectual property
  - Microsoft provides coverage with respect to its patent portfolio for individual developers who contribute code to SuSE.org that is included in the SUSE Linux Enterprise platform
  - Microsoft provides coverage with respect to it patent portfolio for non-compensated developers
- Direct covenants to customers, not licenses running with software

# **Business Collaboration Agreement**

- Under the business collaboration agreement, the companies will pursue a variety of joint marketing activities
- Technical Road Shows, Case studies, White papers and Technical roadmap support
- Customers can benefit from the use of the new software solutions developed through the collaborative research effort, as well as a version of Linux that is covered with respect to Microsoft's IP rights.

# Issues

- “Agree to disagree”
- different approaches but general respect for IP
- IP peace of mind
- Agreement allows both companies to pursue their business models
- Trying to distinguish commercial and non-commercial uses

# Models of Co-opetition?

- Competition as fierce as ever
- Customers want competition and cooperation
- Competitors finding ways
  - to enhance interoperability
  - to share intellectual property
  - to build bridges between communities, including OSS and proprietary software communities
- The IP system is flexible and can be used to enhance co-opetition

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