

**OpenSSL
Conference
Prague 2025**

7-9.10 2025

Legal And Commercial Pitfalls of Poor Open Source Management

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Dr Lina Boecker – Osborne Clarke - Germany
Tereza Formanova – Sedlakova Legal - Czechia**

7th October 2025 – 3:30PM – Belvedere I



Panel Members



With both law and IT qualifications, Hayden has a deep understanding of the technology and digital economy sector. He regularly speaks on legal issues across technology, IP and privacy law, including the RSA cyber security conference in San Francisco and AusCERT in Australia.



Dr Lina Böcker is an experienced information technology (IT) lawyer and one of the few experts in the field of open source software (OSS) compliance and artificial intelligence. She is a partner at Osborne Clarke Germany. For more than ten years, she has been advising a wide range of clients, from software developers to international OEMs and public research institutions, on all aspects of artificial intelligence, licensing law and general IT law. She received her doctorate in open source law in 2009. She writes regularly for the Frankfurter Allgemeine Zeitung on digitalisation topics.



Tereza is an attorney at law in the Czech Republic. She helps start-ups and SME's to identify and protect their intellectual property. She provides consulting services in the field of open-source licensing and makes sure the FOSS components are not omitted in contracts. She also teaches intellectual property law at Ambis University and provides training for the Czech Bar Association on trademarks and copyright, including open-source licensing.

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Abstract

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We will examine the legal and commercial implications of poor open source and third-party code management, including: The legal basics of open-source licensing; The risks of unknown third-party code in proprietary software; Bad and good dev team habits when using open source; War stories, including how poor third-party code management can kill an M&A deal; Best practice with open source and third-party code management.

Agenda

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- Fundamental concepts
- Know your code: the risks of software of unknown provenance
- War stories: how third-party code can kill an M&A deal
- The good, the bad and the ugly: dev team habits and open source
- Key takeaways

Perceptions

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Lawyers don't get software

Lawyers aren't competent to review

Lawyers are always rushing things

People are never going to look at the details so it doesn't matter

Common Mistakes

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Developer's believe they can “work around” restrictions in a license

It makes sense to the developer; it makes no legal difference

Licenses aren't really written in plain language

Fundamental concepts

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Source code is a “work” protected under copyright laws

Copyright laws vary significantly between countries

Licensing software allows a copyright owner to grant use permissions to others, subject to certain conditions

Moral rights are separate - and also vary between countries

Fundamental concepts

License category	Description	Examples
Public domain	All rights granted, effectively extinguishing copyright	CERN's httpd, SQLite, etc
Permissive license	Broad use rights, good license compatibility, allows reuse + relicensing within proprietary software	MIT & BSD
Copyleft	Broad use rights, does not allow reuse + relicensing within proprietary software (requires re-license under Copyleft terms), bad license compatibility	GPL & LGPL & Sleepycat
Non-commercial license	Grant rights for non-commercial use only, bad license compatibility	Creative Commons Attribution-Non Commercial (CC BY-NC) license
Proprietary license	A license granted on commercial terms to use proprietary software	Jira, Oracle Enterprise Manager

Fundamental concepts

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License compatibility

Two different licenses that when combined, which have no contradictory rights or obligations are considered compatible

Usually, the more restrictive the license, the less compatible it is with other licenses

This is relevant for works of software that combine source code from different packages

Fundamental concepts

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CLAs (contributor license agreements) or
DCOs (developer certificate of origin)

Do they help?

Do they harm?

Fundamental concepts

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CRA (EU Cyber Resilience Act)

End of the world?

End of Open Source?

Guaranteed employment for lawyers for next two decades?

Fundamental concepts

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Other Regulations

End of the world?

End of Open Source?

Guaranteed employment for lawyers for next two decades?

Know your code

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The risks of software of unknown provenance in proprietary software

Dual Licenses

And or Or is important

SSLeay / OpenSSL dual

Mozilla License

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Know your code

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Software Developers / Software Engineers are focused on problem solving

Open Source encourages very broad sharing of code

License terms are often not clear (to a developer)

License terms for major packages are often in dual forms

a license for the “collection” **and**

separate licenses for each member of the “collection”

Know your code

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One aspect is that people simply don't know what they have and where it came from - diligence is not "normal" for engineers. People grab code from everywhere

CTO @ major security company

Know your code

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De Minimis - https://en.wikipedia.org/wiki/De_minimis



Admiral Ackbar
Star Wars: Episode VI
– Return of the Jedi

Know your code

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Software Bill of Materials - SBOM

Problem is solved!
Or is it?

AI Generated Code

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Given we are all going to be replaced by AI and the current beta test involves us blindly cut-n-pasting AI provided code what is the copyright status and legal liability for accepting AI code?

If AI has been trained on GPL'd code what is the license status of its GPL-derived output?

War stories:

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War stories: how third party
code can kill or substantial
reduce the value of an M&A
deal

If you had two things you could get a developer to listen to and change what would those two things be?

War Stories

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Dealing with breaches Experiences

War Stories

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Notable disputes arising from license compatibility:

Jacobsen v. Katzer (USA, 2008) - win for open source licensor

Artifex Software Inc. v. Hancom Inc. (USA, 2017) - win for open source licensor

Hellwig v VMware (Germany, 2015-2020) – loss for open source licensor

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