

# COMMERCIALIZING OPEN SOURCE SOFTWARE: DO PROPERTY RIGHTS STILL MATTER?

## Abstract

*A major shift toward open source software is underway. Companies are more critically evaluating the cost effectiveness of their IT investments, seeing the benefits of collaborative development, and looking for ways to avoid vendor lock-in. At the same time, academics and industry visionaries are criticizing the use of a traditional appropriation mechanism for innovation—the patent—by bemoaning the decisions of U.S. and foreign governments to permit software patents, the rising numbers of patents on software-related innovations (the so-called “arms race” build-up), and the cost and frequency of patent litigation in the software industry. The critics generally have applauded the shift towards open source, albeit for somewhat varying reasons.*

*This paper responds to those trends by analyzing the role of property rights in the open source model, with a particular focus on the effectiveness of the appropriation mechanisms that the open source model uses in lieu of intellectual property rights. I make two main points. First, I argue that open source’s commercial success is intertwined with its incorporation into traditional commercial value chains. What that means is that open source cannot continue to grow in commercial importance without the property rights that are necessary for firms to profit at other points of the value chain. Second, I argue that despite open source’s distributed development process, open source in the real world is likely to support an increasing concentration in the software industry. The reason is that the proprietary firms best situated to exploit commercial interactions with open source will be large firms, particularly large services firms. Smaller firms will be less successful as services firms, and far less successful at exploiting the value-chain interactions that have driven commercial open source.*