



Attract investments by putting your IP in order

Webinar on 22 September

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SORAINEN



Agenda

10:00 Opening words
partner Mihkel Miidla

10:05 M&A transactions in a nutshell
M&A expert Robin Teever

10:15 Intellectual property as an
asset
IP expert Olivia Kranich

10:35 Open source components
TMT expert Oliver Kuusk

10:55 Q&A



M&A transactions in a nutshell



Robin Teever

- M&A with a start-up flavour
- Array of due diligence
- It all starts with a request list
- Being prepared?



IP in LDD



What IP does the company have?

Can the IP be protected? Has it been?

Are all assignments/licences in place? Are they being complied with?



What do we recommend?

- Conditions precedent
- Warranties / specific indemnities
- Conditions subsequent



Intellectual property as an asset

Olivia Kranich

Identifying intellectual property assets

Trademarks

Business names

Domain names

Patents / Utility models

Geographic indications

Industrial designs

Business/trade secrets



Copyrights



Ensuring appropriate protection of registerable assets

- Are registrations in place or applications filed for everything that needs to be protected with registrations?
- Are the registrations in question valid?
- Do any registrations need to be renewed during or shortly after the transaction?
- In whose name are the registrations?
- Are there any on-going disputes (e.g. opposition, cancellation or invalidation proceedings)?

Most common issues

- Trademarks are not registered or are registered only in limited territories or with regard to insufficient list of goods and services
- Third parties have prior rights to relevant trademarks
- Domain names are registered in the name of natural persons instead of the company as a legal person
- Relevant top-level domain names (.com/.eu/.ee) are not registered or belong to third parties





Social media accounts (Facebook, Instagram, LinkedIn)

- Social media platforms require a business account/page to be opened by/linked to a natural person's account
- The natural person in question has the control over the business account/page
- If no safeguards are in place, the natural person can cut access to the business page/account

Copyrights

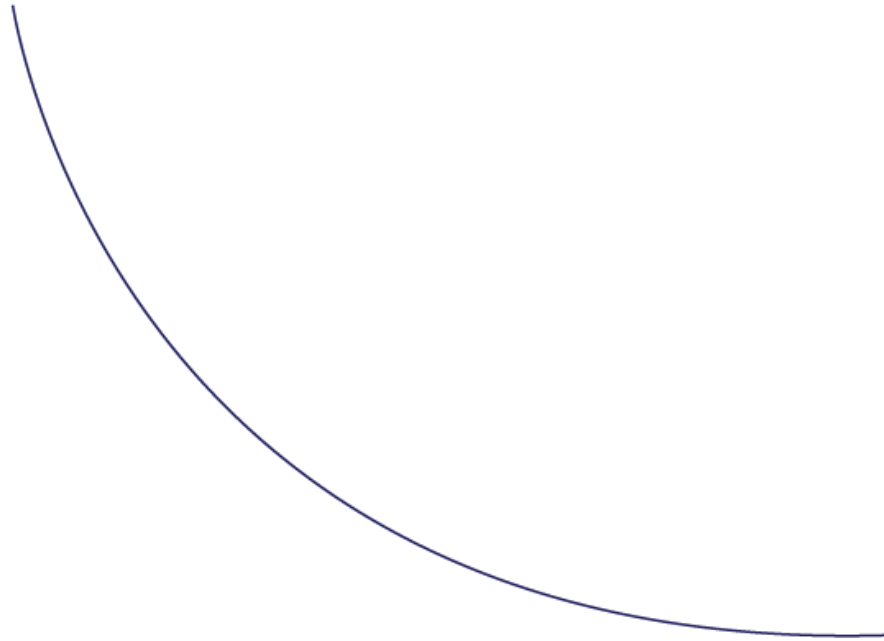
- Protect original work in literary, artistic or scientific field which is expressed in an objective form and can be perceived and reproduced
- Automatically belong to the author
- Consist of author's economic and moral rights
- Can be assigned or licensed

Ensuring proper assignment and licensing of copyrights

- Who has participated in the development of material intellectual property assets?
- Are appropriate agreements in place with relevant persons?
- Is the regulation on intellectual property rights established sufficiently?
- Can intellectual property rights be further assigned/licensed?



Most common issues relating to copyrights



No agreements in place with regard to copyrights

No separate regulation on assignment and licensing of copyrights in relation to computer programs

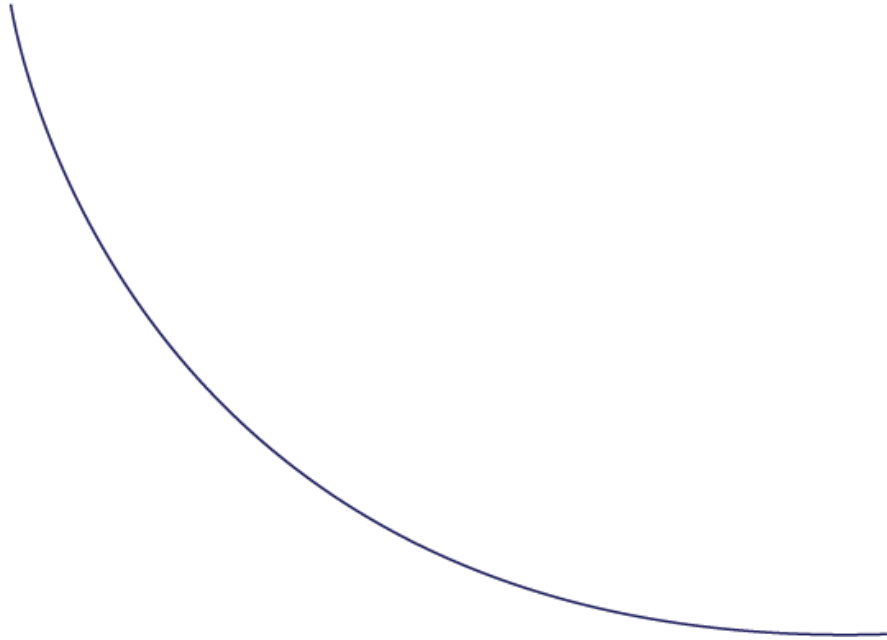
No distinction between economic and moral copyrights

Moral rights are licensed for an unspecified term

Open source components

Oliver Kuusk

Open source components



Why is it important?

Why is it scrutinized?

Open source components

Computer programs are protected under copyright as literary works.

Open source software:

- permissive licenses
- copyleft licenses or “viral licenses“

Main obligations:

- copyright information
- include license
- disclose changes/source code





Open source components

The problem with viral licenses

- The feared GPL v2 and v3
 - Derivative works created and distributed must be licensed under the same license
- Restrictions to commercialisation under the GPL:
 - provide source code
 - customers are allowed to redistribute for free

Open source components

What you need:

- open source software policy
- identify all open source software components
 - a) license
 - b) manner of use
 - c) modifications
 - d) functionality & replaceability

Know what's in your codebase and document applicable licenses.



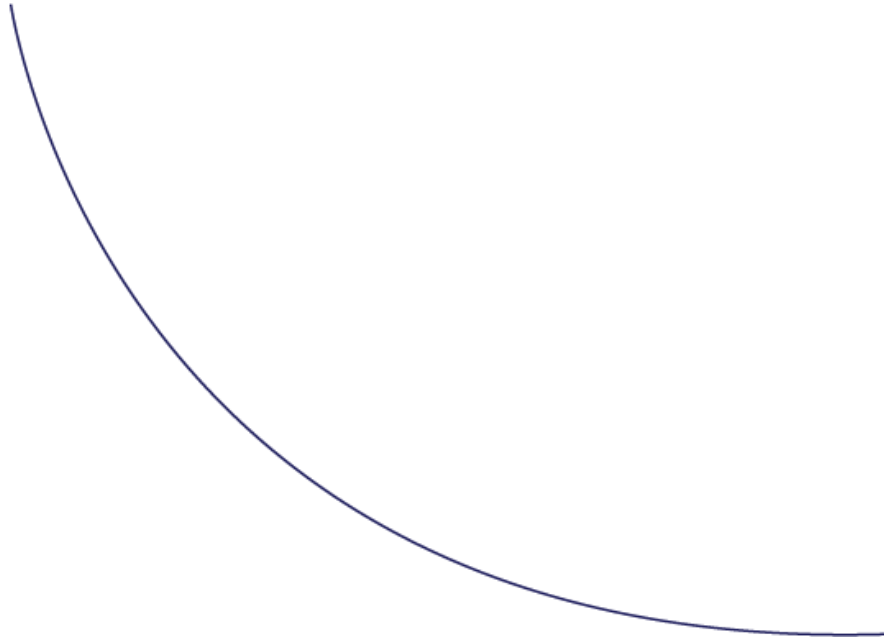


Open source components

Open source software policy ABC:

- understand the purpose of your project
- know what's in your codebase
- stick with licences suited for your project:
 - permissive licences for commercial proprietary projects
 - copyleft licences for collaborative projects

Software dependencies



Critical software dependencies &
commercialisation of software

Critical software dependencies

- The question: what kind of rights do you have to third party IP assets?
- Transaction impact
 - Change of control or anti-assignment clauses





Commercialisation of software

- The question: what kind of rights do third parties have to your IP assets?
 - Distribution agreements, license agreement, reseller agreements, material transfer agreements, etc.
- Key rules:
 - License or provide a service, do not assign
 - Non-exclusive and non-transferable
 - No exclusivity for territories, channels or products



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