

## Commission Workshop: OpenUK's Feedback for Commission Post Workshop Report

ec.europa.eu/information\_society/newsroom/image/document/2019-46/full\_agenda\_version\_13nov\_17h30\_open\_source\_beyond\_2020\_agenda\_1\_F80F22EA-F4F5-3D52-B90AC47A3BD09D24\_62965.pdf

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4 December 2019

We have set out below feedback on six areas of particular concern.

### 1. Understanding and improving knowledge of open source and open hardware at the Commission

OpenUK commends the Commission's ongoing work to understand open source software and open hardware, both areas which, together with open data, fall under OpenUK's remit. The initial workshop was excellent, save only for a lack of gender diversity in the speakers. OpenUK's CEO, Amanda Brock, will support the Commission in improving the gender diversity in the future by sharing a list of female speakers able to cover relevant topics with the Commission via the event organiser Luis C Busquets-Perez.

OpenUK requests participation in this process, irrespective of the UK's potential withdrawal from the European Union. OpenUK recommends that UK Government follows the Commission's example in seeking to better understand open software, data, and hardware.

OpenUK looks forward to seeing the output of the Commission's OSS/OSH tender in 2020 and will recommend that a post-Brexit UK follows the Commission's lead in creating a better understanding of "open", both at a Government and legislative level. We also recommend the creation of a Commission policy unit that understands "open" to review existing legislation and input into the legislative processes.

### 2. Open Source Businesses, Commercial Models, and Data

Like Europe, the UK's open market largely comprises SMEs providing consultancy and support services around open source software, hardware, and data. The UK has a few larger companies (such as Alfresco and Canonical), as well as a number of local outlets of global tech businesses such as Red Hat, IBM, SAP, and Dell. The UK also has increased adoption of open source across mainstream businesses including banks, insurance companies, and automotive and energy businesses, as well as adoption in fintech where the UK is a hub.

The limited number of business models for organisations supporting open source and the difficulties for SMEs providing support services to the Commission were flagged.

Further research is required in the area of sustainable business models for open. Also, given that data is now a critical component of the business models of the future, developing greater understanding in the business models, data usage and opening up locked-in data lakes, whilst continuing to maintain and respect privacy of individuals, needs further attention.

In making a procurement decision that includes open, there is a need for an understanding of issues around standards and lock-in in relation to software to allow the procurer to make an informed decision based on an assessment of whole-life costs/total economic impact and the risk of supplier failure.

With respect to public procurement, contract terms and the procurement process must allow for a level playing field between open and non-open software and hardware.

The Commission is now following up on the commitments made in the Tallinn Declaration and is being seen to adopt and understand open source. Over and above its existing commitments, we encourage the Commission to use, and over time contribute to open projects. In the short term we encourage the Commission to support the 'Public Money, Public Code' initiative.

### 3. Suitable measures and metrics for innovation

Historically patents have been used to measure innovation and value businesses. However, European patent laws mean that patents are less frequently granted in Europe for software. They are more frequently granted in the US, but registering them is prohibitively expensive for SMEs and the process is slow, often too slow to meet the pace of current software innovation.

The open source communities have generally been seen to be against software patents.

The “total cost of ownership” model of measuring value remains a relatively unexplored model for on-premise solutions, and with the advent of cloud computing appears to have been largely superseded and replaced by 'total economic impact'. We believe that both of these models and the commercial and economic impacts and realities of using open source require significant research. We therefore request the Commission to support this research with funding.

#### 4. There is no need for regulation of code or coding

The question of the regulation of code was raised and OpenUK wishes to emphasise how CRITICAL it is that code and coding itself should NOT be regulated. We seek a clear understanding by regulators and lawmakers of this.

The way in which code is used may of course be regulated if it is used in a regulated sector.

Coding should be considered to be like writing any other language or words, to which freedom of expression applies. Therefore, the same principles should apply to coding as apply to freedom of expression more generally. Any regulation should focus on use cases of code.

It is a common misunderstanding that regulating code is a solution but this is clearly an attempt to fix the wrong problem. The problem that requires a solution is not coding *per se*, which should be a freedom of expression, but use cases of the code which may need regulation.

#### 5. The role of education, training, and professionalisation

There is an ongoing and increased need to provide training and education around coding, both for children, who will be the workforce of the future, and for the re-training of adults to re-purpose their roles.

We recommend introducing a professional standard or qualification in open.

#### 6. Risk and Open Source

There remains an incomplete understanding of the risks around software and innovation, and in particular open source. Those who understand risk often do not understand software, let alone open source.

Decades of self-insurance by large tech companies means that the traditional insurance market's understanding of risk is limited.

We recommend further research and investment in this area, along with research into risk and risk management for open source software, data, and hardware.

Submitted on behalf of OpenUK and the OpenUK Legal and Policy Committee

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