Individual Contribution License Agreement Strategy

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Contribution: Legal Framework

- Software is automatically protected by copyright law and sometimes patent law
- OpenStack Foundation needs to get a license from the developers, both independent individuals and corporate employees
- Rights of developers to contributions from corporate employees and independent individuals are very different
  - Generally corporations own the copyrights and patents developed by their employees working within the scope of their employment, so corporate authority to bind corporation is very important (no change proposed in current Corporate CLA ("CCLA"))
  - Individuals contributors will own their copyright (and possibly patent)

- OpenStack Foundation ("**OSF**") uses the Apache Software License Version 2 for the project ("**ASL2**")

- Apache Software Foundation ("**ASF**") provides ASL2 and forms of Individual Contribution License Agreement ("**ICLA**") and Corporate Contribution License Agreement ("**CCLA**")

- ASF developed the ICLA and CCLA prior to the development of the ASL2 and modified ICLA and CCLA after the development of ASL2

- ASL2 also includes a provision (Section 5) which is meant to govern "contributions" by users (a backup to CLA)

- ASF ecosystem of ASL2 and contribution license agreements is unusual among open source projects

- Strong preference by Technical Committee that all contributions be governed by DCO

Current Approach Based on ASF Approach

- Developers
  - All developers use Launchpad to execute Individual Contributor License Agreement
- Corporate Developers
  - Individuals who are contributing on behalf of their employer have their employer execute the Corporate Contribution License Agreement

Revised Approach

- Management of developers will shift to openstackid OpenID system

- Developers will be compared against CCLA appendixes for "authorized contributors"; if on such a list, no further agreements need to be signed

- Developers who are not in any CCLA appendix, will sign either ICLA or DCO

Adopt Developers Certificate of Origin ("DCO") Process instead of ICLA

- DCO procedures use "certificates" by developer
- DCO process developed by Linux Kernel Organization in 2005
- Focuses on ensuring:
    1) Developer with greatest knowledge makes certification
    2) Provides traceability to permit "removal" of code if wrongly attributed
- DCO is an agreement with legal consequences (which some developers don't recognize) but focused on management and identification of contributions
- Linux ecosystem has never used CLAs

DCO

By making a contribution to this project, I certify that:

(a) The contribution was created in whole or in part by me and I have the right to submit it under the open source license indicated in the file; or

(b) The contribution is based upon previous work that, to the best of my knowledge, is covered under an appropriate open source license and I have the right under that license to submit that   work with modifications, whether created in whole or in part by me, under the same open source license (unless I am permitted to submit under a different license), as indicated in the file; or

(c) The contribution was provided directly to me by some other person who certified (a), (b) or (c) and I have not modified it.

(d) I understand and agree that this project and the contribution are public and that a record of the contribution (including all personal information I submit with it, including my sign-off) is maintained indefinitely and may be redistributed consistent with this project or the open source license(s) involved.

ICLA/ASL2: Copyright License Grant

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https://review.openstack.org/static/cla.html

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http://opensource.org/licenses/Apache-2.0

Key Issues to Consider

- Not solely a legal decision
- Board should consider "prudential" (or business) issues as well as legal issues
- Projects have different reasons for adopting CLA or DCO:
  - Financial ability to support administrative overhead
  - Nature of project and need for legal certainty by developers/users
  - Potential for project to be target for litigation
  - Culture of project

Legal Differences of ASL2 as Contribution License Agreement

- **No direct patent license to uses of Apache software in ASL as contribution license agreement**
- Enforceability of legal obligation less certain in DCO procedure
  - No "electronic signature" but might be implemented
- ASL2 license less clear than ICLA: definition of "Work" in ASL2 depends on "notice" in contribution (ICLA much broader)
  - Potentially effects scope of both licenses
- ASL2 does not include representations about right to license
- ASL2 modestly greater risk of finding of "executory contract" that could be vulnerable in bankruptcy under US law (may be low order commercial risk given low likelihood of individual bankruptcy)

Prudential Issues

- Scope of problem
- Should individuals and corporate contributors be treated differently
- Technical Committee View
  - Increased speed of contributions
  - Increased number of contributions

Recommendation

- After weighing the legal risks and the strong recommendation of the technical community as represented by the Technical Steering Committee, I in my role as outside General Counsel of the OpenStack Foundation recommend that the OpenStack Foundation adopt DCO solely for individual contributions (contributions by developers working for corporations pose different legal issues, such as corporate authority and different risks)