[The Commons Conservancy]

NLnet. *Supporting pioneers for the open internet*.

[The Commons Conservancy]

Management summary

[The Commons Conservancy] is a flexible, fast and financially attractive way to establish *post-project phase* shared funding within a mature open source environment and with a heterogeneous group of serious stakeholders. Instead of creating a standalone legal entity, a derived (virtual) entity is created within a stable long term framework for each effort which is given delegated responsibility for its own oversight and policies. By providing flexible conditions and separating the financial side (incoming donations and outgoing payments to developers) from involvement with the technology and strategy choices, there is a large degree of freedom without contamination risk between different virtual program consortia.

A new program is provided with sane defaults to start with, but every open source effort can choose its own prefered mode of operation according to its specific circumstances and boundary conditions. This includes settings its own copyright and relicensing policy and determining its own member admission policy. There may be intentional overlap or non-overlap between virtual consortia.

Each program appoints a "Software Advisory Council", a lightweight "board" which consists of members and observers. Through the SAC the key decisions are made: the groups goals are set, candidate grant applications are given their blessing and the outcome of subprojects is validated. [The Commons Conservancy] is software license agnostic, the only condition is that software is available for general reuse under an OSI recognised open source software license. [The Commons Conservancy] provides a shared mechanism for managing domain names, trademarks, copyright, etc. - which stays in place dormant for possible rejuvenation even after the lifetime of the program.

Introduction

Infrastructural open source efforts bootstrapped through project funding in an ad hoc consortium often find that after the initial project has formally ended, the resulting software is not exhausted by far. The project has brought together independent stakeholders and with a shared interest in the technology these are in need of another - more sustainable - way of collectively handling maintenance and further development. Priorities within the group and the balance of interests may shift during the lifetime of an initiative: some participants may choose to continue with some alternative solution due to a change of strategy, or simply cannot afford to invest more. Others loose track as key personnel moves elsewhere. For other participants the technology developed has become a necessary building block for their operations, and they are ready to continue to invest - and even increase their spending now the technology has proven itself useful.

Many good projects find it difficult to mature beyond the original project stage. Putting the governance inside the legal structure of one of the stakeholders - if any of the organisations is willing and able to do so - puts the whole administrative burden in one single place. It also results in a slight disbalance of power, which might make other stakeholders hesitant to fully invest in the project. Of course a separate legal entity such as a dedicated foundation can be set up, and for some projects this has proven to be a key step. But the setup and maintenance of such a legal structure poses quite a lot of overhead - both financially and in required organisational involvement. Such an effort can be distracting from actual software development. This dilemma contributes to the fact that many good projects get stuck inbetween project status and the setup of a dedicated foundation around the project.

In some cases a project may find shelter in an existing umbrella organisation such as for instance the Apache foundation. This is however tied a solution tied to a specific software license, with specific conditions and also requires a good culture fit of the project with that existing community.

[The Commons Conservancy] accommodates projects that fall inbetween these parameters. It offers a light-weight 'virtual foundation', which has all the useful features of a regular foundation but without the formalities. By providing a flexible framework and separating the financial side (donations) from involvement with the technology and strategy choices, there is a large degree of freedom without contamination risk between different virtual program consortia.

How does it work

[The Commons Conservancy] is intended for collaborative efforts that mature from a standalone open source project to a more comprehensive cooperative program (post-project stage). While the project stage is characterised by a predefined lifetime and meeting short term needs, the conservancy program is intended to serve the communities' long term needs - both at a feature development level and in solidifying technology through software engineering and security hardening. The conservancy helps to channel efforts for as long as enough users of a particular body of software are interested in its development and maintenance, and is able to provide continuity during intermittent phases.

Upon entry into the conservancy each program (meeting the conservancies eligiblity criteria) gets allocated its own turn-key virtual organisational infrastructure within [The Commons Conservancy], which allows its to manage the interests of the community efficiently without the necessity of going through a legal process of establishing a standalone entity. The SAC can perhaps best be seen as an embedded foundation within the umbrella conservancy, dedicated to both maintenance as well as fostering smaller subprojects contributing to a coherent body of open source software code.
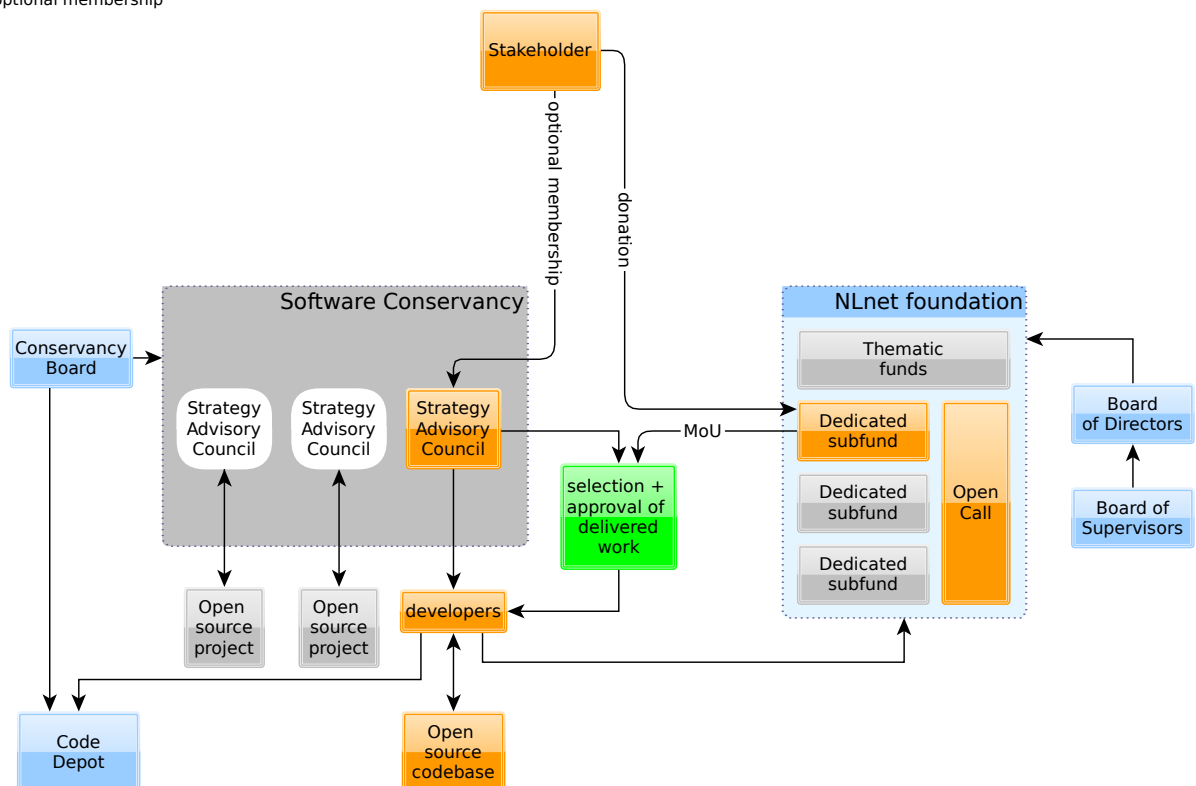
Next step is the establishment of a so called "Strategic Advisory Council", a lightweight committee which consists of developers, users, donors and other direct stakeholders. A representative of the [The Commons Conservancy] is appointed as ex officio member, and acts as secretary of the SAC and liaison to the [The Commons Conservancy] board. In addition, key indirect stakeholders such as industry bodies or associations can be appointed as observers. A quartermaster is appointed to establish a program charter on behalf of the SAC, through which the program lays down its processes and scope. The charter also determines the copyright and relicensing policy for the project it serves.
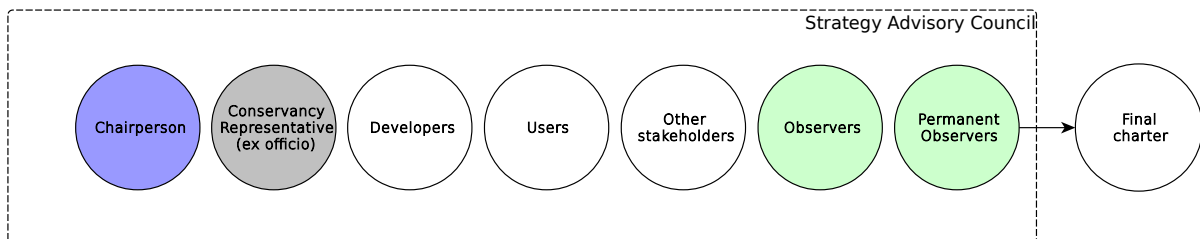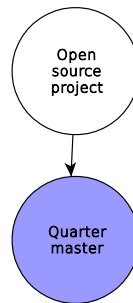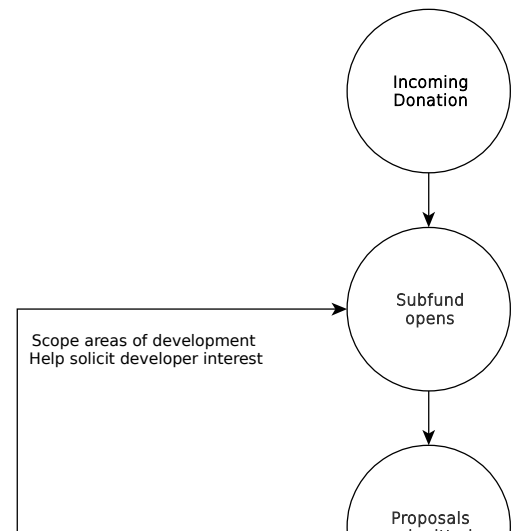
Handling donations

[The Commons Conservancy] does not handle money or develop code. It overviews the architecture, sets policies and legally stewards the code base as well as domain names, brand registrations and other non-tangible assets on behalf of its community. Financial contributions are handled through an existing legal entity with a recognised charitable status and a long standing track record of fostering the technology commons (NLnet foundation). The
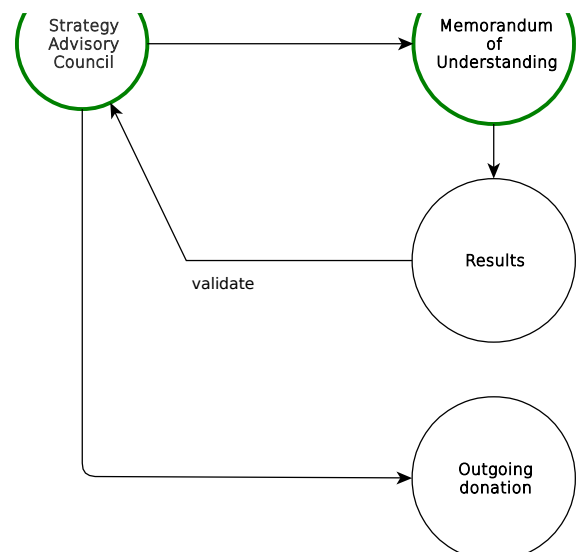
Netherlands is well-known for its robust global network of bilateral tax agreements with many countries, and the legal form of 'stichting' is generally accepted as world leading in the not-for-profit category. The above means that donations to a program within [The Commons Conservancy] are in typical cases tax deductible from day I, without any further work.

Per program a dedicated subfund for grants is instantiated with voluntary donations from organisations or people who wish to advance the quality and feature set of the open source software involved. Members of the SAC have define the scope of possible subprojects and areas of interest that might further the goals of the program, and help manage the overall program interest during their execution. Note that in addition, members of the community at large are also invited to propose projects directly within the scope of the subfund, or through the regular global open call for projects. Developers interested in obtaining a development grant write a short proposal, in which they outline their specific technological and methodological approach as well as the required donation. SAC members help to review incoming proposals with regards to their fit with the program, software engineering impact, team quality and budget effectiveness.

When a project proposal is selected, a Memorandum of Understanding is signed between three parties: the charity maintaining the grant budget, the developers wishing to contribute and the SAC (as representative of the community). The MoU establishes that the developers will only receive a donation of a certain amount after they have reached the specific milestones that were agreed upon. Upon reported completion of a milestone, SAC members help to review evaluate these milestones before they are accepted. When (due to progressive insight) the course of the subproject needs to be altered along the way, an amendment to the Memorandum of Understanding can only be proposed in agreement with all signatories. In the exceptional circumstance that a developer is unable to fulfill what was agreed in the Memorandum of Understanding, only the results that were achieved can be financially compensated. The SAC will be informed and asked to advise on how to proceed.

The source code that is the result of a subproject grant shall always becomes available for general reuse under an OSI recognised open source software license. In addition the charter of a program may set additional conditions such as a Contributor License Agreement or a secondary open source license (e.g. a BSD-style license) for code. This allows the contributed code to be put into software escrow to potentially settle software license incompatiblities. [The Commons Conservancy] accepts the legal ownership on behalf of its programs. If the SAC of a certain program is unable to come to a decision by itself, or when petitioned by at least 100 users, [The Commons Conservancy] will appoint a taskforce to act in the way most fit with the original spirit of the project, its charter and its contributors.

Cost and conditions

The cost for participation in [The Commons Conservancy] is between 5 and 8% of the budget made available through a particular subfund, provided that a particular effort satisfies the elibility criteria of [The Commons Conservancy]. This cost can be waived, if a unmarked and voluntary donation with equivalent (or higher) amount is made to the facilitating charity towards its work on the open internet. 100% of these donations will directly benefit projects that help keep the internet open, safe and secure. In many cases donations to a registered charitable organisation are fully tax deductible.