THE CYBER RESILIENCE ACT AND OPEN SOURCE PROJECTS

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DISCLAIMER: The presentation is general information and not legal advice about your specific situation

I am not your lawyer

THE CYBER RESILIENCE ACT

Regulation (EU) 2022/0272 (2024)

EU WIDE DIGITAL PRODUCTS AND CYBERSECURITY REGULATION

NIS 2 Framework (2023)
ENISA Standards (Draft 2024)
EU Product Liability Directive (2024)

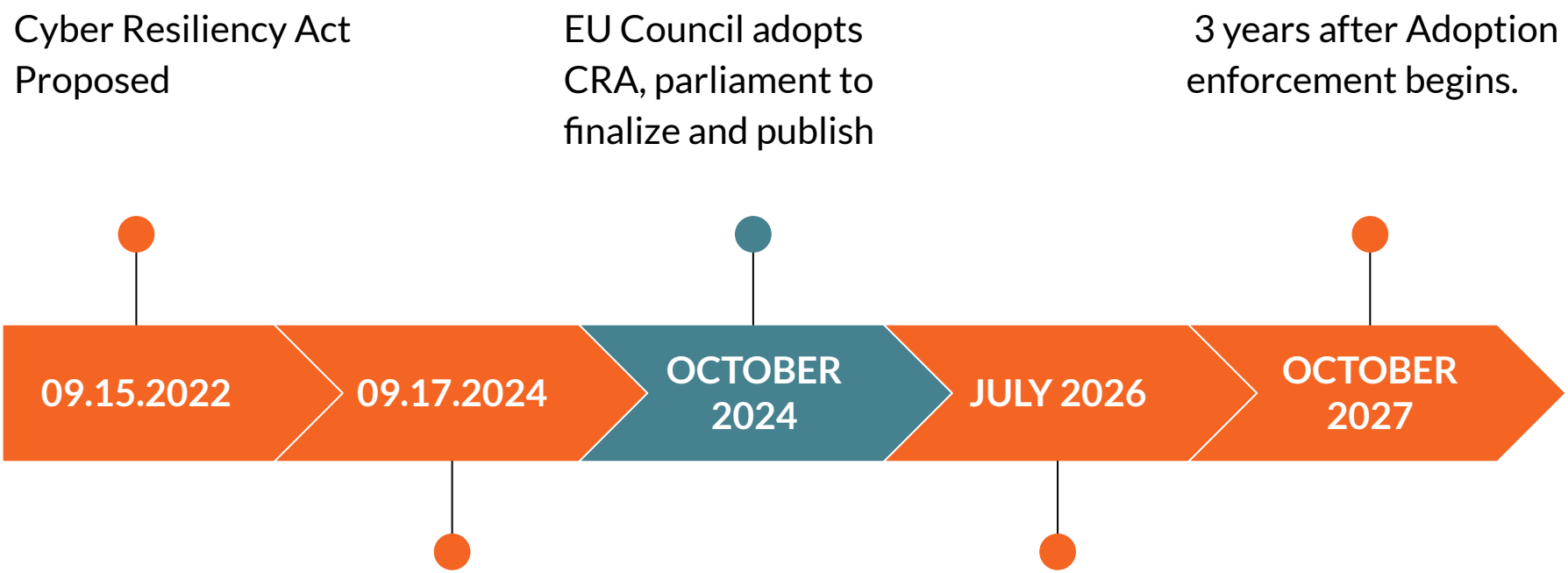
WHAT IS THE CRA?

EU WIDE PRODUCT REGULATION

- Products on the EU common market
- With a network component
- Few exceptions, most already regulated

STATED GOALS OF THE CRA

- Ensure manufacture of digital products that are private and secure throughout the product life cycle
- Transparency about product security to help consumers


Cyber Resiliency Act Proposed
EU Council adopts CRA, parliament to finalize and publish
3 years after Adoption enforcement begins.
09.15.2022
09.17.2024
OCTOBER 2024
JULY 2026
OCTOBER 2027
EU Council and Parliament “Approve” CRA
Reporting Requirement starts 21 months after Adoption

Cyber Resiliency Act Proposed

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EU Council and Parliament “Approve” CRA

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HOW WILL THE CRA REGULATE ?

REPORTING

- Manufacturer's must report breaches and exploited vulnerabilities
- Reporting to both ENISA & CSIRT - with follow up reports

STANDARDS & CERTIFICATION

- Technical documentation of compliance, update process, and end of life policy - all made public
- A "CE" mark. Products must be certified or self-assessed as meeting security and privacy standards throughout the product life cycle
- Scary fines & penalties

THE REALITY OF THE CRA

UNSTATED GOALS

- Show public action on security & privacy
- Force large tech actors to consider privacy and security
- Without harming EU Manufacturing

ENFORCEMENT AND SCOPE

- Proposed scale of regulation is vast
- Primary regulator (ENISA) has around 100 employees
- CRA self-assessment/certification are self-regulation

WILL THE CRA APPLY TO MY OPEN SOURCE PROJECT?

FOSS UNDER THE CRA

DEFINITION OF FOSS

- Software that has publicly available code
- Offered under open license

PROTECTION A: IS MY PROJECT A PRODUCT?

FOR THE CRA A PRODUCT IS:

- Is software or a physical good
- With a networking component

FOR THE CRA A PRODUCT IS NOT:

- Contributing to another's FOSS project
- A service, including software as a service (that may face other regulation)
- Hosting a code repository
- A ISP or IXP
- An individual or company

PROTECTION B: IS MY PRODUCT COMMERCIAL?

CRA ONLY APPLIES TO "COMMERCIAL" FREE AND OPEN SOFTWARE

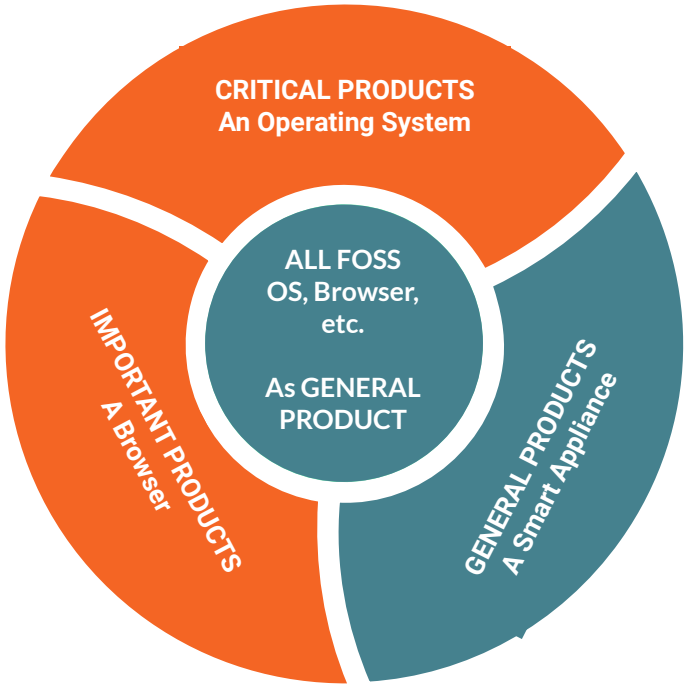
A COMMERCIAL FOSS PROJECT:

- We still don't know exactly what it is … but …
- It's directly monetized
- More than receiving donations
- More than a contract or two for specific features or maintenance

WHAT IF SOMEONE USES MY PROJECT COMMERCIALLY?

COMBINED FOSS & COMMERCIAL PRODUCTS

- The CRA doesn't apply to FOSS included in another commercial product
- Manufacturer of product including FOSS elements must do due diligence
- Unless the FOSS developer had "Commercial Intent"



WHAT IF MY PROJECT IS COMMERCIAL?

- Commercial FOSS projects only have to meet the standard for a “General Product” (Self Assessment) regardless of purpose.
- You can afford a lawyer

OTHER PROTECTIONS:

YOU'RE JUST A LIL' GUY

- Small, Medium and Micro Enterprises (less than 250 persons/€50M turnover (per 2003/361/EC) have lower requirements and fines.

OPEN SOURCE SOFTWARE STEWARDS

- NGOs that assist FOSS projects.
- May work with regulators to produce domain specific standards
- Subject to lesser sanctions for mistakes in reporting etc.

THE TEXT vs. REALITY

WHAT TECH PEOPLE MISS ABOUT LAW

- Legal Code is not the same as “Code”
- Enforcement and understanding of law is constantly evolving
- At scale law almost always avoids absurd results

QUESTIONS FOR A RISK-BASED APPROACH TO THE CRA

- Are OS projects the CRA’s regulatory target?
- What can an one due to avoid being subject to regulatory scrutiny?
- What is the record of enforcement for similar regulations?

A RISK ASSESSMENT

THE OS DEVELOPER & THE CRA

Gets some corporate donations.
Has a support contract or two

Relax! Only be concerned if:

- Your project is making money
- Your project is collecting private data
- Your project is a tempting target

Still worried…

- Review your income, costs, security and privacy policies.
- Start documenting security efforts
- Watch for Regulator and Steward actions
- Review your reporting process

Resources

WHAT TECH PEOPLE MISS ABOUT LAW

- CURRENT ACT
  https://www.europarl.europa.eu/doceo/document/TA-9-2024-0130_EN.html

- ENISA PAPER ON STANDARDS
  https://www.enisa.europa.eu/publications/cyber-resilience-act-requirements-standards-mapping

- MY WEBSITE
  https://bourniquelaw.com/