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LEGAL RISKS AND BENEFITS OF OPEN-SOURCE SOFTWARE

Benefits Open-Source Software

Use

Cost-Efficiency

The most obvious benefit of OSS is cost efficiency. Many open-source licenses, such as the GNU General Public License (GPL), allow users to use the software without the need to pay licensing fees or royalties. This can lead to substantial cost savings for organizations, especially startups and small businesses, which can allocate their resources to other critical areas of development and growth.

Freedom from Licensing Constraints

One of the most significant legal benefits of open-source software is

the freedom it provides from

complex licensing agreements. Unlike proprietary software, which often comes with restrictive terms and conditions, open-source software is typically distributed under licenses that grant users the freedom to use, modify, and distribute the software without many of the limitations commonly found in proprietary licenses. This simplicity can save organizations from costly legal disputes and compliance challenges.

Community Oversight

Most open-source projects have vibrant communities of contributors and users who actively monitor and enforce license compliance. This community oversight can help

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organizations avoid legal pitfalls by ensuring that

they adhere to the terms of the open-source licenses. This collaborative approach strengthens the legal foundations of open-source software.

Flexibility and Customization

Open-source software allows organizations to tailor software to their specific needs without the restrictions often imposed by proprietary software vendors. This flexibility empowers organizations to adapt the software to their unique requirements and legal obligations, ensuring that they remain compliant with applicable laws and regulations.

Long-Term Viability

Proprietary software can become obsolete or discontinued, leaving organizations with limited options and potential legal complications. In contrast, open-source software remains accessible and can be maintained and adapted by the community even if the original developers move on. This long-term viability reduces legal risks

associated with software dependency.

Risks of Open-Source Software Use

Unclear Licensing

One of the primary legal risks of open-source software is the potential for unclear licensing terms. While most open-source projects come with licenses that define how the software can be used, modified, and distributed, not all licenses are created equal. Some may have ambiguous language or unexpected requirements that can lead to compliance issues, unless legal experts are engaged.

License Compatibility

Using multiple open-source components within a single project can lead to license compatibility issues. Some open-source licenses are incompatible with others and combining them can create complex legal dilemmas that may necessitate modifications or even the removal of certain components.

Lack of Warranty and Liability

Lately, developers are seeing incidents of software updates containing “protestware” or malicious code. These incidents highlight how organisations that use a lot of OSS are dependent on the good faith and diligence of the opensource community.

Open-source software is typically provided "as is," without warranties or guarantees of any kind. This lack of warranty means that if issues or vulnerabilities arise, you may have limited recourse against the developers or maintainers. This can pose a legal risk if your software depends on open-source components for critical functionality.

Intellectual Property Concerns

Open-source software development often involves contributions from various individuals and organizations. There's a risk that some contributors may not have the legal right to contribute their code (for example, the code was made during the course and scope of their employment and thus belongs to the employer), leading to potential intellectual property disputes.

License Compliance Issues

The dedication of time and resources required to achieve compliance makes open-source software (OSS) potentially expensive. This expense arises from the necessity to invest time in evaluating licenses, typically managed by the legal team, and subsequently, the need to introduce practical measures to ensure compliance, handled by the developers or tech team. In situations where a considerable number of OSS components are incorporated into a company's software, it becomes essential to carefully assess the licensing terms for each individual software element and then make the necessary adjustments to align with any new terms or attribution requirements.

Mergers and Acquisitions Considerations

When open-source software (OSS) is a significant asset or a part of a business' sale, it's highly likely that open-source components are integrated into the software. In

such cases, the vendor or seller is typically obligated to provide warranties regarding the extent of OSS integration with proprietary software. This situation can potentially erode the proprietary nature of a software asset and, as a consequence, reduce its overall value in a sale.

Buyers often have numerous inquiries concerning OSS, therefore, it is essential for the seller to consult with their development or tech team to ascertain which OSS components were used and how they were integrated. Gathering this information may prove challenging and potentially slow down the process of the business sale or transaction.

It is crucial for both buyers and sellers of software to conduct thorough due diligence to assess the degree of OSS inclusion within the asset.

Conclusion

In conclusion, the realm of open-source software (OSS) presents a dynamic landscape filled with both risks and benefits. As we've

explored throughout this paper, the advantages of OSS are abundant, however, it is crucial for organizations to acknowledge and address the inherent risks that come with adopting OSS.

To navigate this intricate terrain effectively, the involvement of legal expertise becomes paramount. Lawyers specializing in technology and intellectual property, like the Gobhoza Legal Practice team, play a critical role in risk mitigation when dealing with OSS. We offer invaluable guidance in assessing and mitigating licensing risks, ensuring compliance, and crafting robust policies and procedures. Our expertise helps businesses strike a balance between harnessing the benefits of OSS and safeguarding their interests.

If you have interest in an in-depth discussion on this subject matter or any technology law related issues, feel free to contact us at info@gobhozalegalpractice.co.bw
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