OSS BEST PRACTICES FOR COMPANIES

Integrating open-source software (OSS) into a company's operations without due consideration of the governing licenses can expose a company to lawsuits which can be quite expensive to remedy at a later stage. When a company distributes a product that incorporates OSS, such as a comprehensive software application with OSS modules embedded therein, strict adherence to the accompanying license terms is imperative. To mitigate these risks, here are recommended practices for your IT or technology-oriented business to adopt to safeguard against exposure to lawsuits.

1. Enhance OSS Integration and Patent Compliance

Establish a robust OSS approval process or form within your organization for whenever an engineer/developer proposes to use OSS. This process should mandate the developer seeking to incorporate OSS to disclose any potential intellectual property rights associated with the OSS.

Within that disclosure process, introduce a mechanism for flagging OSS utilization. When an individual is submitting an invention disclosure for their software application, include a question in the form that prompts them to declare whether the invention incorporates any OSS. This dual-pronged approach promotes transparency

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and safeguards against potential legal entanglements.

2. Manage OSS Licenses with Lists and Validation

Maintain a whitelist of acceptable OSS licenses, a blacklist of rejected OSS licenses, and a validation process to approve OSS licenses not on either list.

Consider distinctions between different types of licenses and requirements for approval. For example, use of code under a GPL license may require review by an attorney while OSS under a permissive license may not. The Company should document all uses and have procedures in place to ensure that license requirements are being adhered to or complied with.

3. Ensure OSS Compliance from Software Vendors

Prior to making major software purchases, require vendors to provide OSS audits or make representations and warranties that the vendor has disclosed all OSS licenses used and that they are complying with same.

Remember, liability in IP is strict, meaning that using software that violates an OSS license, even if it came from a third party could implicate your company. Hence, robust vendor representations and warranties are essential.

4. Establish an Employee OSS Contribution Policy

If your company allows your employees/team to contribute to OSS projects, it is wise to have an employee contribution policy dealing with prior IP and company specific IP as well as distinguishing between the IP that the employee retains and that which is open source. For instance, you may require your team of developers to notify the company if they are participating in a non-company side project. You may also restrict developers in participating in side projects that compete with the company.

5. Indemnity Strategies

When entering into relationships with OSS companies, be sure to execute a coherent and intentional indemnity strategy, such that your company is indemnified from any

lawsuit concerning the use of their OSS.

6. Regular Source Code Audits

Perform regular source code audits to determine OSS in current use, and confirm compliance with the applicable license provisions. A compliance officer or OSS attorney might be of assistance.

Conclusion

Incorporating open source software (OSS) can greatly benefit companies, but legal compliance is paramount. To navigate the complexities of different OSS licenses, having legal counsel to ensure compliance is vital. By doing so, businesses can enjoy the advantages of OSS while safeguarding against potential legal pitfalls.

We thank you for joining and learning with us on this series on Open-Source Software. Keep a lookout for our next exciting series, coming soon to Tech Tuesdays.

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 Tel: 3116371

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