



"Companies report an average of 94 open sources in use, but actual inventory scans show they actually have from three to ten times more packages in the environment."

- Stormy Peters,
Executive Director,
The GNOME Foundation

Are you Open Source Safe?

Use of open source and third-party code components in proprietary software has reduced the time-to-market for software products. It has also left organizations exposed to certain risks.

The software industry has witnessed a marked change in the past few years. Instead of building applications from scratch, developers are increasingly using code from various sources. One of the key factors to which this change can be attributed is the rise of Open Source Software or OSS.

Open Source Software is a term used to describe the software products for which the source code is available under a license. There are a number of licenses concerning OSS. These licenses describe the exact liberties and restrictions for the use of software made available under these licenses.

The Rise of Open Source

In today's competitive software industry, organizations understand the need to develop applications as quickly as possible, without compromising on quality. As a result, developers in many organizations are turning to the use of open source code components which can be included in the source code of their software in order to accelerate the development process. This minimizes wastage of time and resources on reinventing the wheel, resulting in increased productivity. Besides, many organizations also use third party development firms for software development. The developers are

generally required to disclose the use of open source code components. However, the use of open source code frequently goes undeclared resulting in exposure to certain risks.

Risks involved with Open Source

Although the use of open source code components has many merits in software development, organizations need to be aware of certain risks associated with it. These risks include:

1. Labyrinth of Licenses

Organizations are required to comply with the terms of the licenses associated with each of the open source code components used. The most commonly used open source licenses include the Apache License, the BSD Licenses, the GNU General Public License (GPL), the GNU Lesser General Public License, the Common Public License etc. While most licenses allow usage, modification and redistribution of the source code, there are subtle differences in their respective terms of use. As the number of open source code components in a software product increases, the number of licenses to comply with also increases, each with a different set of obligations. This increases the probability of facing an obligation to comply with a set of incompatible license terms. Besides, each

and every open source code component and its origin might not have been ascertained, thus making total compliance all the more difficult.

The plethora of licenses, with subtle differences between their terms of use, makes it necessary to adequately manage the open source code components, along with their licenses and associated obligations.

2. Potential Threat to IP

Some open source licenses make it a legal obligation for the developers to release the source code of all the applications which use open source code components distributed under these licenses. This increases the chances of unintentional dilution or loss of the organization's intellectual property.

The recent litigation between the Free Software Foundation (FSF) and Cisco demonstrates this point. In the lawsuit, the FSF alleged that Cisco had violated licenses of software of which the FSF holds the copyright. An agreement was reached where Cisco had to make the defaulting code publicly available on its website. It also had to accept supervision of its compliance with the free software licenses and make a monetary contribution to the FSF.

As another example, the GPLv3 license states that if one licenses a patent under GPLv3 for a given project, then the

patent license granted is automatically extended to all recipients of the covered work and works based on it. This potentially gives anyone the right to use the patent (through a derivative work).

3. Risks in M&A Due Diligence

During acquisitions, in order to make an accurate valuation, it is important to have accurate information about the software assets, for both the acquirer and the company getting acquired. For a company getting acquired, having properly managed source code would help them in obtaining the best value for its products. The acquirer needs to have a thorough understanding of any intellectual property obligations, as it would help in estimating the value of the target company.

Thus, incautious use of open source code components in a software product can expose organizations to certain risks, which can result in rework, delay in release, loss of IP, inaccurate evaluation in M&A or expensive lawsuits.

Avoid Risk Using Open Source Code Review

In order to avoid the risks associated with the incautious use of open source code components, organizations can go for open source code review of their software. Open source code review involves examination of the source code of a software product in order to identify and analyze the open

source code components present in the code. Moreover, the review can also help organizations identify the license terms associated with the various components as well as the incompatibility between license terms. The review helps organizations in managing the risks and issues related to intellectual property rights that arise out of the use of open source code in proprietary software.

Conclusion

As is evident, for faster and secure development of software, for correct valuation of worth in acquisitions, for avoiding loss of IP, as well as for avoiding lawsuits caused by breach of license, it is necessary to have an in-depth knowledge of the open source components being used. Open source code review of your software can help in managing the intellectual property rights and licenses efficiently, while minimizing the exposure to risks.

After Jacobsen v. Katzer, the terms of open source licenses are enforceable under copyright law, which can result in damages of up to \$150,000 along with attorneys' fees and surrender of profits

About iRunway

iRunway helps corporations and law firms unlock and protect the value of patents. We combine deep technology expertise with practical business insight to monetize patent portfolios and profoundly improve litigation outcomes. Our in-depth analysis has contributed to significant courtroom victories and favorable settlements for our clients.

- Fourth-largest patent jury verdict in the U.S. in 2009
- A strategic cross-licensing deal with a Fortune 200 technology company
- Favorable settlement with a medical systems company in a copyright case