

Opening up your open source policy

“Use of open source in our products shall be permitted only after written approval of the Legal department.” Sounds familiar? This is, in a nutshell, what most companies’ open source policies come down to. These policies are introduced to minimize real or perceived risks associated with open source. Unfortunately, in doing so, they also minimize any beneficial effect a company may obtain from deploying open source. Reformulating your open source policy can result in significant benefits for the company bottom line.

Why open source?

Open source software is widely available code that can be used, modified and deployed freely. In many cases open source easily outclasses its proprietary competitors. By using open source, a company can reduce development time, save on licensing fees and rely on well-tested code. The majority of IT companies, such as IBM or Google, rely on open source for a significant part of their business. In the consumer electronics industry, open source is routinely used in products such as televisions, DVD players and mobile phones. Yet, many companies try to limit the use of open source by introducing very restrictive open source policies.

Why an open source policy?

Open source licenses are often unfamiliar to companies used to working with traditional, proprietary licenses. This creates concerns about license compliance and the risks of violating open source licenses. While these risks are real, they have to be understood in light of how the open source development model works. This model is unique: individuals and companies from all around the world work together to develop and share improvements to a generally-available codebase.

Open source licenses are written to support this model. They require contributors to freely license changes and sometimes improvements or extensions, and protect developers by minimizing their liability for bugs or infringement of third-party rights. An open source policy must keep this model in mind. The right policy allows a company to gain value from this development model. Seeking to limit all liabilities from open source usage or regarding all code as “proprietary IP” will not.

Creating value with open source

A policy of course should not ignore the risks of open source. For example, when switching from an existing software package with extensive warranties to a freely available open source alternative, the reduced cost should outweigh the lack of warranties. But the risks should not be the *sole* criterion to decide if open source is to be used. A proper policy makes these risks *manageable*. This requires that the policy is integrated in and supports the development process.

Using open source is not a black-or-white decision. A company can use open source for certain features and use closed, in-house developed or commercially licensed software for other features. The job of an open source policy is to ensure that the resulting product offers the most value to customers.

The question then becomes, how to determine this value? When is open source good to use, and when should a proprietary alternative be chosen? This is the key question for any open source policy. To answer it, a company first has to answer another, more fundamental question: what is our secret sauce?

Don't write an open source policy out of fear. Look for the value that open source can provide.

The secret sauce

Every product and every service has a secret sauce: the *unique selling point* or differentiator, an aspect that provides the reason why customers will want to buy it. This USP can be anything. A television can provide excellent image quality, an intuitive electronic program guide or just a low price. A Web service can be made easy to use for beginners, or provide lots of flexibility for other developers.

	Make	Buy	Open Source
Differentiator			
Commodity			

The classic make/buy decision, enhanced with a third option: open source.

The opposite of USP's are the *commodity features*: features that are needed to deliver the product or service, but that do not provide added value to customers. Open source software is available for anyone to use. In other words, open source by definition provides commodity features. And this is where open source brings the value to a company. Using open source, the 80% of code that provides the product's or service's commodity features is easily implemented, so that development can focus on those features or services that provide the USP's.

This brings into mind the old "make or buy" decision: develop your USP's in house, and buy the rest. With open source, a company has a third option: it can buy software or rely on open source for its commodity features. The open source policy sets the baseline for this decision.

Open source procedures

A good policy sets the baseline, but by itself is not enough to obtain the maximum benefit from open source. A set of procedures need to be defined, so that all those involved with product development know how open source is to be used for the company's products and services. For example, engineers need to know what the license implications are of their use of an open source library into a software stack. Product managers need to know how to acknowledge use of open source in the documentation. Support staff should be prepared to handle requests for the source code of open source components. And of course company lawyers should guide the entire procedure to ensure all aspects thereof are within the license requirements.

The bottom line

Companies that use open source need an open source policy. But don't just focus on the risks. Focus on the benefits value that open source can bring to a company. The policy should make clear where open source *should* be used. Allow open source to focus on what the company does best. An accompanying open source procedure helps to integrate the policy into the business processes. Introducing such a policy and procedures can be a challenge, but the value for the company will be worth it!

About the author



Arnoud Engelfriet is IT lawyer and associate at the Dutch legal services firm ICTRecht. With his software engineering background he specializes in Internet law and software licensing issues. Before joining ICTRecht he worked for almost nine years at Royal Philips Electronics, where he created and deployed the firm's open source policy. Arnoud has published extensively about open source. Among others he published the first legal analysis under Dutch law of GPL version 3. At ICTRecht Arnoud set up the Open Source Helpdesk service, a subscription-based consultation service for open source licensing advice. A.Engelfriet@ICTRecht.nl - +31 6 1423 0806.