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I am interested in giving a short oral presentation at the meeting.

Please note the following disclaimers:
(a) The content of this presentation is entirely my personal views and
(b) This does not represent the views of my employer or its legal department.

Good morning, thank you for the opportunity to present.

I believe in respecting the parameters of the meeting. Prior to attending, I asked the organizer, Mark Gomersall, if I could bring up a topic that is not one of the three on the agenda. Whe n I told him what it was, he agreed. So, I will briefly address the three agenda points, and then discuss **the need for additional specific guidance on use of the Gnu Public License (GPL) in deliverable software**.

So first, on the specific agenda points:
The DoD's Open Source FAQ (http://dodcio.defense.gov/sites/oss/Open_Source_Software_(OSS)_FAQ.htm) dedicates a question on its assertion that Open Source Software *is* commercial software, and if it is used unchanged it is COTS. It goes further and dedicates another question to the assertion that, "It is important to understand that open source software is commercial software".

Let me be clear - I am not a lawyer. But it is my personal hope that after today's public meeting, any resulting published guidance or assistance with mitigation on how to address these two points, potential copyright infringement liability and warranty deficiencies with respect to Open Source, is consistent with similar mitigation strategies for the same two risks with commercial software use. This will be consistent with the DoD's Open Source FAQ.

On the third point, "specify clearly the rights", I must be too much of an engineer but I don't see the downside of the DFARS being more specific. Please make it so.

The comment I *really* came to submit has to do with guidance on the GPL. The GPL represents between 50-66% of all the Open Source out there, depending on whose statistics you use - no other Free and Open Source (FOSS) license comes close. I would like the DoD to work with the Software Freedom Law Center and/or the Software Freedom Conservancy (i.e., the "guardians" and license enforcement bodies of the GPL) to provide better education on prudent use of the GPL.

There is a widely held belief that use of GPL components in a larger software deliverable ***may*** lead to undesirable outcomes - namely forced public disclosure of proprietary source. Good people can and do differ on whether this risk in using GPL components is worth the benefit. I believe this fear impedes adoption of GPL components - and hence greater Open Source adoption in DoD software deliverables. Because we lack specific guidelines on how to leverage GPL programs with proprietary work, there is much unnecessary fear about use of GPL in deliverables.

On the gnu.org site, there is a FAQ and a question about mixing GPL and proprietary software (https://www.gnu.org/licenses/gpl-faq.html#GPLInProprietarySystem)
We learn this:

1. we can't "**incorporate** GPL-covered software in a proprietary system" but we can "**distribute** the GPL-covered software **alongside** your proprietary system"
2. "To do this validly, you must make sure that the free and non-free programs **communicate at arms length**"

3. The difference between *incorporating* and *distributing alongside* is given as “partly a matter of substance and partly form”

Arms’s length? Substance? Form? You can understand hopefully why engineers – and the lawyers that look out for them – clamor for more specific guidelines. Questions that specify the bright lines better might include:

1. Do two separate executables passing parameters to each other constitute sufficient arm’s length?
2. Does dynamic linking provide sufficient separation?
3. Does dynamic linking with a GPL licensed library (not LGPL) automatically make the whole work a derivative work, subjecting the whole work to GPL coverge?

Please understand that I am not advocating a panacea or a comprehensive set of criteria, but rather an agreed to set of specific guidelines that can be incrementally added to over time, that can cite specific real world examples of uses typical in our industry.

In the DoD’s Open Source FAQ, they write this:
http://dodcio.defense.gov/sites/oss/Open_Source_Software_%28OSS%29_FAQ.htm#Q:_What_are_the_risks_of_failing_to_consider_the_use_of_OSS_components_or_approaches.3F
"DoD contractors who always ignore components because they are OSS, or because they have a particular OSS license they don't prefer, risk losing projects to more competitive bidders. If that competitor's use of OSS results in an advantage to the DoD (such as lower cost, faster schedule, increased performance, or other factors such as increased flexibility), contractors should expect that the DoD will choose the better bid. "

I’ve of two minds on this guidance. On the one hand I’m employed by a private employer, and part of me wants our competitors to “have a particular OSS license they don't prefer”, and hence “risk losing projects to more competitive bidders”. Fortunately, my patriotism compels me to ask the DoD to help craft better GPL usage guidelines so that *all* its suppliers can prudently leverage the huge pool of quality open source software that is GPL licensed.

Specifically, I would like the DoD to help mitigate this via education crafted in partnership with the GPL’s guardians, that uses concrete real world examples to educate and inform about proper GPL component reuse. We would all be better off if the bright lines are made brighter so we can be better informed in decisions about when we are willing to cross them.

I thank you for the opportunity to present these views.

Mario Obejas