



OPENGEO

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DEPARTMENT OF DEFENSE

Defense Federal Acquisition Regulation Supplement; Open Source Software Public Meeting

Remarks Delivered by Eddie Pickle of OpenGeo

On copyright infringement liability concerns

On the question of the risks of copyright liability, open source does not differ from proprietary software. Open source is no more likely to have proprietary or copyrighted materials incorporated than proprietary software. Therefore, the guidance for selecting open source solutions is quite similar to what it would be for prudent procurement of proprietary software: make sure you know your source.

In the case of open source software, that means that you are obtaining the software either from a reputable company that includes an indemnity for the code they distribute (OpenGeo is one such example) or software that is distributed with the support of an organization (such as Apache.org or OSGeo.org) that require contributors to sign agreements ensuring only unencumbered code is contributed.

We can't overstate the fact that the practical risks are minimal: despite decades of open source use the number of examples of legal actions undertaken against end-users due to allegations of improper code in open source projects is vanishingly small. In the case where this does occur, legal mitigation in these cases is always clear: open source projects that have mistakenly embedded encumbered code simply remove it when notified, the software is automatically updated, and the end users move on to the unencumbered version.

On concerns about open source failing to meet contract requirements

If system integrators are providing performance guarantees for the systems they provide, that includes the components they embed, open source and proprietary.

Practically speaking, if a system component fails, the integrator must either remove it, fix it, or work around the failure. If the component is proprietary, the integrator can only receive a fix from the vendor, which is why contractual language is so prized. If the component is open source, the integrator has the option of fixing it themselves, on their own schedule. If the integrator (or the client) does not have confidence in their ability to fix open source components, they can enter into a contractual agreement with an open source vendor (such as OpenGeo) to ensure timely contractual access to support for the components. Note that in the open source case, the integrator and client have multiple options for dealing with a component failure, while in the proprietary case they have only one.

On revisions to the DFARS

On this question, we at OpenGeo defer to the expertise our colleagues such as David Wheeler, who have written and spoken extensively on the topic of actual procurement policy as it relates to open source software.