
Open Source Software - Factors to Consider

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The availability and use of open source software is becoming increasingly prevalent. Open source software is distributed in a form that allows software developers to view and modify the critical source code that describes the structure and operation of the program. Developers may be tempted to use open source software when developing software products or designing or modifying web sites. However, by using open source software, the developer may subject itself to far-reaching licensing terms which will limit, or even prevent, it from fully exploiting its product or web site for commercial purposes.

Often viewed as more of a philosophical movement than a commercial trend, the spread of open source software has been promoted by high profile proponents such as the [Free Software Foundation](#) which supports a fundamental shift in the ways source code is used and exploited. The widespread adoption of open source programs such as the Linux operating system, the Apache web server and the PERL programming language attest to the viability of the open source model for many purposes.

Open source software may or may not be distributed for a license fee. Much open source software is free, but a number of commercial enterprises have sought to distribute open source products commercially. Access to the source code of open source software -- the code that is understandable to a developer and is compiled into machine-readable object code -- gives users the ability to modify and develop derivative works from that open source software. It greatly reduces development time because the developer can take advantage of the time and effort invested by others. Because this source code is no longer protected as a trade secret, an open source license allows users to observe how functions in the open source software are implemented, so that the user can modify the software or develop its own similar software. Accordingly, open source software represents a significant departure from proprietary commercial software, in which access, in most cases, is strictly limited to the compiled object code of the licensed software, and modifications are generally prohibited.

As users of open source software have multiplied, so have companies that have embraced open source software as a business opportunity. Among the types of companies seeking to utilize an open source model are the following:

- those that distribute open source software under a brand name, and in some cases, provide support services for such software;
- those that make their proprietary software available on an open source basis in order to facilitate and encourage the widespread development of enhancements and add-ons to the open source code;
- those that develop and market add-ons of proprietary software, documentation, support or training for open source software; and
- those that make themselves more visible and useful to open source software users by such means as distributing open source software of a third party with their own proprietary software

In each case, a company's decision to use open source software in any capacity must be carefully considered due to the varying license terms under which open source software is made available. It is important to remember that open source code is not necessarily in the "public domain", and it is often protected by copyright laws to the same extent as other software.

Numerous groups have developed licenses under which open source software is distributed. The most common forms of these licenses are derived from the "Berkeley Standard Distribution" or BSD license, the GNU General Public License, or GNU GPL, and the Mozilla Public License developed by Netscape.

Each of these licenses varies in its restrictiveness. Perhaps the best known of the three, the GNU GPL supports the underlying philosophy of the Free Software Foundation by permitting copying, modification and distribution of the software, provided that any work that "in whole or in part contains or is derived from" the open source software is itself distributed to third parties under the terms of the GNU GPL. Sometimes referred to as a "viral" license, the GNU GPL accordingly "infects" all derivative works of the initial open source software with the GNU license terms. As its central tenet, the GNU GPL requires that all modified versions of the open source software (including all proprietary software that uses the open source software) be distributed at no charge and with no additional license restrictions.

As a result, developers wishing to take advantage of the easy availability of open source software must carefully review all applicable licenses and have a clear strategy to avoid turning their own proprietary products into open source software. Users of open source software must also rigorously keep track of the open source software which they use, in order to prevent inadvertent violations of the terms of the applicable open source licenses.

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