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The King Is Dead; Long Live the King: “Software as a Service” Licensing Trends

by Thomas Prowse

While “software as a service” (SaaS) is continuing to experience commercial success in the marketplace, the SaaS model is currently at the crossroads of two major, yet somewhat contradictory, software licensing trends.

The first trend is the diminishing role of software licensing as an element of the SaaS business model. While there are some remaining instances in which software is truly being licensed as part of a SaaS business (such as part of a hybrid SaaS-enterprise-business model, or user-installed client software as part of a client server architecture), in the majority of cases the emerging SaaS model is all about the delivery of a service, and has nothing to do with the licensing of software to the end user.

While it is understandable that many companies have continued with a software licensing focus as part of their transition from an enterprise-licensing model to a SaaS model, the software licensing approach and mindset frequently introduce unnecessary complexity into the pure SaaS delivery model. In most cases, the removal of the legacy software licensing provisions will facilitate a clear business focus on the key service elements, such as the Service Level Agreement and the transitional provisions. Since SaaS is really about the delivery of a service

and not about the licensing of the underlying software technology, this software licensing “king” is dead.

The second trend is that software licensing is, oddly enough, becoming increasingly important in connection with the SaaS business model. Over the years, many, if not most, SaaS companies have made extensive use of “open source software” (OSS) in connection with their hosted business. The wide range of readily available, high-quality OSS programs that carry no licensing cost has provided the key building blocks for many SaaS businesses. Since this OSS software is, by definition, available in source code format, many SaaS businesses have readily embraced the opportunity to modify and enhance this OSS software to better support their technical and business requirements.

For many years, the traditional OSS model has only required the release of modified (or “associated”) source code in the connection with the distribution of software. It was generally accepted that the use of OSS in connection with the delivery of a hosted service did not constitute distribution. As a result, there has been no legal obligation for the SaaS companies to release the modified or associated software to their customers and/or the OSS community,

even though many SaaS companies decided to contribute their enhancements for a variety of valid business reasons. In short, OSS legal compliance was not seen as a major concern in the SaaS world.

With the adoption of Version 3 of the General Public Licence (GPLv3) in 2007, and the parallel release and increasing adoption of the updated Affero General Public License (aGPL), a pivotal change is occurring with respect to the use of OSS as part of a SaaS service. The earlier and much simpler SaaS-OSS model is now being superseded, in the case of aGPL, with the additional requirement to provide the source code for modified (and “associated”) software in the case where it is used for the delivery of a service (or “network use”). As noted above, many, if not most, SaaS companies have made extensive use of open source software as part of the platform for their service offering, and have, for good reason, not focused on any requirement for the provision of modifications of the source code.

With the increased adoption of the aGPL*, it is now essential for SaaS companies to focus on OSS license compliance. It has been a long-standing best practice among enterprise software companies to adopt an OSS policy to address legal, business, and technical issues related to the adoption and use of OSS. It is now critical for SaaS companies to follow their lead. In addition to legal issues concerning pedigree, third-party claims and licensing compliance, the OSS licensing compliance policy needs to address the new compliance requirements arising from the network use of OSS under the aGPL license in the SaaS delivery model. Long live this licensing “king”!

* According to Black Duck Software, there are, as of February 4, 2010, some 280 OSS projects governed by the aGPL. See <http://www.blackducksoftware.com/oss/licenses/#adoption>.



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