Open Source Software Counseling

The use of Open Source Software (OSS) offers compelling advantages for software developers, including product flexibility, ease of integration, and development cost reductions.

Hamilton Brook Smith Reynolds has extensive experience in key aspects of OSS, including compliance, licensing, management, and dispute resolution.

The firm considers OSS in IP strategy and portfolio review in a manner that contributes to sophisticated counseling to which clients have become accustomed. Hamilton Brook Smith Reynolds is one of a few IP law firms in the United States approved by the OpenChain Project (sponsored by the Linux Foundation) to educate, analyze, and provide recommendations for companies to be OpenChain compliant. OpenChain (ISO 5230) is the International Standard for OSS license compliance, defining critical requirements for a quality OSS compliance program. As an International Standard, OpenChain compliance allows organizations to confidently make certain representations and warranties as to OSS licensing risks and provides parties within a supply chain with assurances that software code has gone through a consistent OSS review process.

The broad depth and diverse technical backgrounds of our attorneys enable us to anticipate problems that may arise in all areas of science and technologies relating to intellectual property rights, software releases, software acquisitions, and license compliance.

Our OSS attorneys have experience in identifying and addressing complex OSS issues in a variety of contexts, including:
- IP Strategy Development;
- Corporate Diligence;
- Compliance Issues;
- Licensing;
- Litigation and Contested Matters.

We leverage that experience when providing the following services:
- advising clients on achieving OpenChain compliance;
- developing institutional OSS policies;
- performing OSS audits and remediation (e.g., advising on cleanroom software development);
- ensuring license and regulatory compliance;
- counseling on risk mitigation when using OSS code;
- educating on OSS policies through training programs;
- handling transactions relating to software deliverables (e.g., reviewing and revising standard contracting terms relating to OSS licensing); and
- managing OSS litigation and dispute resolution.

Industry Examples:

- For companies developing Internet-of-Things/Connected-Things products, we advise companies on how to incorporate OSS and comply with OSS obligations while managing their own proprietary software;
- For research institutions, universities, and government contractors that receive government funding, we counsel the organizations on government contract incompatibility and security clearance issues concerning the use of OSS;
- For medical device manufacturers incorporating OSS, we advise on risk management with regulatory compliance and approval when implementing OSS in medical device products;
- For SaaS companies incorporating OSS in their services, we advise on the requirements of certain OSS licenses (e.g., AGPL) in view of the software architecture adopted and the impact of compliance with those licenses requirements.

To meet the individual needs of clients efficiently, our firm tailors its role on a case-by-case basis. As businesses use OSS code to build their commercial products and services, they also see the strategic value of contributing to OSS projects. Our firm's OSS attorneys counsel clients toward being good corporate citizens in contributing to OSS projects, creating a strategy for OSS participation and management.