



Open Source Considerations for Outsourcing Transactions

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Outsourcing – Migrating a Function Being Performed In-house to a Third Party Service Provider

- a. Functions Currently Being Outsourced
 1. Information Technology Infrastructure Management
 2. Application Development and Maintenance
 3. Business Processes
 - a) Finance and Accounting
 - b) Human Resources Administration
 - c) Procurement
 4. Other (Engineering Services, Call Center, Etc.)



Outsourcing – Migrating a Function Being Performed In-house to a Third Party Service Provider (Continued)

b. Key Benefits:

1. Best Industry Practices
2. Cost Reduction
3. Focus on Core Business

c. Key Risks:

1. Loss of Control over the Function being Outsourced
2. Loss of Knowledge Capital
3. IP Rights Allocation
4. Recourse if Problems Arise



Open Source Questions Raised by Outsourcing

a. Distribution / Propagation

- What is distribution / propagation?
What are the elements? Transfer of possession, perpetually, fee?
- Sample scenarios:
 - Employees
 - Employees of affiliated company
 - Individual independent contractor
 - Corporate contractor
 - Corporate contractor with license for own use
 - Code used onsite, offsite, remotely accessed on server



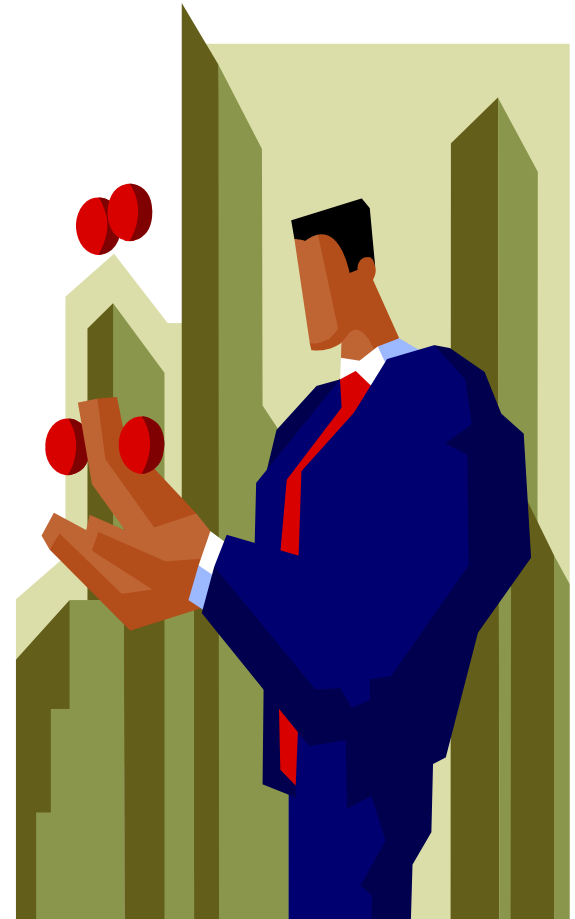
Open Source Questions Raised By Outsourcing (Continued)

- a. Propagation (continued)
- Does delivery of work product by service provider constitute “conveyance” under the GPL?



Open Source Questions Raised by Outsourcing (Continued)

- b. Combinations
 - Would combining a Service Provider's GPL'd code with a Customer's code base subject the Customer's code base to the GPL?
 - Does it matter whether or not the combination was authorized by the Customer?
- c. Tools vs. products for resale
 - Software end user perspective is different from software vendor perspective
 - But, roles evolve, as companies release value in internal tools, spin off business units, etc.



Open Source Questions Raised by Outsourcing (Continued)

d. Responsibility

1. Who's responsible for infringement claims/breach of contract claims related to introduction of Open Source code by the Service Provider into the Customer's proprietary or licensed code base?
2. Does it matter whether Customer knows or instructed the Service Provider to add the Open Source?



Considerations for Outsourcing by Function

a. ADM

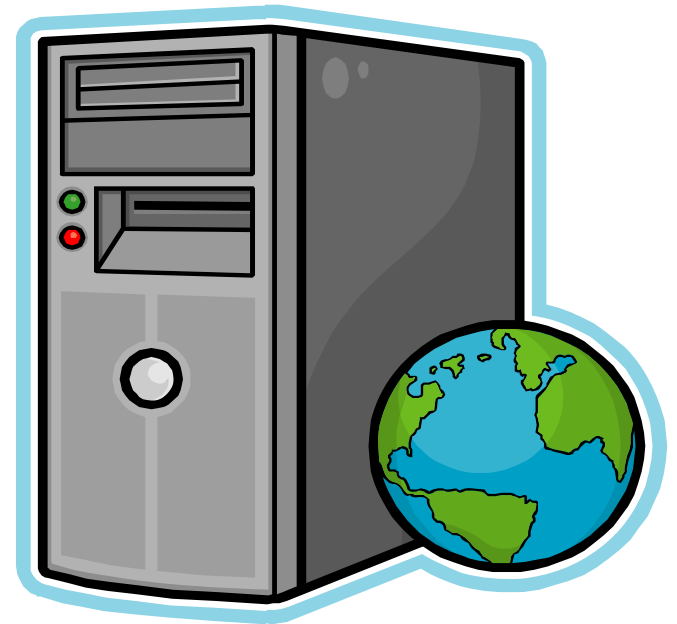
1. Due Diligence
2. Process Controls
3. Knowledge Retention
4. IP Rights
5. Warranties
6. Indemnities



Considerations for Outsourcing by Function (Continued)

b. ITO

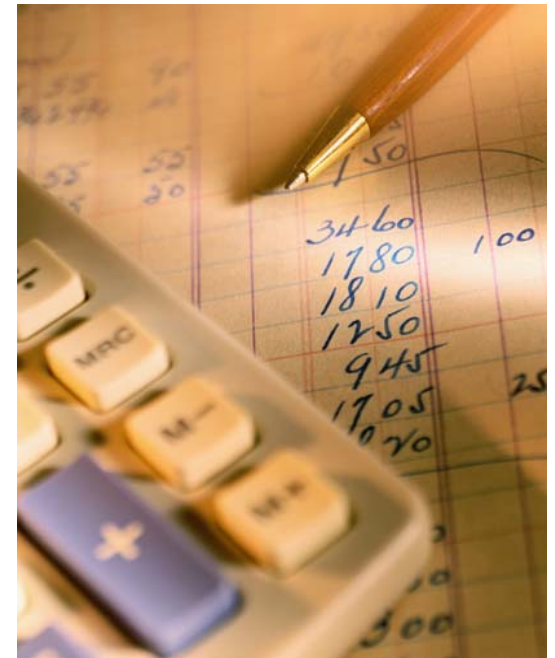
1. Service Provider Tools
2. Rights following Termination
3. Propagation



Considerations for Outsourcing by Function (Continued)

c. BPO

1. Third Party Contract Restrictions
2. Knowledge Retention
3. Data Protection



Considerations for Outsourcing by Function (Continued)

d. Engineering

1. Patents
2. Process Controls
3. Further Restrictions



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QUESTIONS