

[DRAFT OF M. 9/9 9aCST]

Software License Compliance & Vendor Management

Why It's Mission-Critical To Reputation & Cybersecurity, 10 Reasons It's Hard (& Getting Harder), & 10 Available Action Tips To Optimize Your Organization & Team (& Your Career & Skills)

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Henry W. (Hank) Jones, III
Law Office of Henry W. Jones, III -and-
Intersect Technology Consulting
2246 Woodland Springs St., Houston TX 77077 USA
memphishank@gmail.com; mobile 512-695-4673

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Today's Goals & Scope: Forecast

Yes:

- Software Licensing: It Ain't Bribery Or Abuse, Why Care?
- Software Licensing Compliance: Does It Involve Much \$\$s?
- Software Licensing Compliance: Does It Impact Many Business Operations?
- Software Licensing Compliance: Do Many Suppliers Audit?
- Software Licensing Compliance: Will It Hurt? Why? How Much? When?
- Software Licensing Compliance: Don't Our IT Folks "Got This"? (No)
- Software Licensing Compliance: Doesn't Purchasing "Got This"? (No)
- Software Licensing Compliance: Doesn't Legal Prevent & Defend This? (No)
- Can I Contribute, As A Non-Geek? (Yes)
- Should I Bother, If I Don't "Speak Geek" But Aspire To Quality & Compliance?
- Are There Reasonable, Phased, Small-Scale Actions Available To Me?

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Today's Goals & Scope: Disclaimer

No:

- Template "Customer-Favoring" Contract To "Beat" Vendors?
- New T's & C's To Tack On To Old Contracts To Fix Holes?
- Sure-Fire Flame-Dousing Negotiating Tactics To Chill Vendors?
- Prediction That Cybersecurity Gaps & Risks Will Get Fixed In Your Life?
- Assurance That Leveling & De-Bugging Licenses Can Happen Fast
- Subcutaneous Translation Chip To Give You Geek Fluency?
- Magic Incantations To Make Software Geeks 1st Come Ask Your Advice?

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Session's "Level" & Assumptions

- Attendees = Compliance, Only Limited "Geek" / I.T. Fluency
- "Licensing Law = Evolving "Operating System" For Software Sourcing"
- "Epidemiology (Finding & Studying Illness & Mortality) Helps Prevent & Cure Disease": Finding & Studying Software Audit Lawsuits, + "Open Records" Research (Government Customers Research), Enables "Preventive Medicine" In Both Software Sourcing & **Overall** Compliance

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Today's Agenda & Approach

1. Level-Set: # Software Licensing Knowledge & Involvement
2. 10 Reasons Why You & Your Employer Should Care
3. Current Context: How Software Licensing Recently Changed
4. Your Current Non-Compliance: 10 Reasons It's Hard (& Getting Harder)
5. Trend-Watching, Forecasting, Assessment: 10 Reasons It's Risky (& Getting Riskier)
6. Good News: Better Practices: 10 Recommended Action Items For Compliance Professionals To Help
7. Conscious Creative Careerism To Create Clear Chances To Contribute

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1. Level-Setting: # Software Licensing Knowledge & Involvement: Quick Audience Profiling

1. YOUR JOB ROLE

- Software *initial* procurement = *priority* part of your job?
- *Ongoing post-procurement* IT vendor management = *priority* part of your job?
- Software initial procurement = *anecdotal, slight or indirect* part of your job?
- Ongoing post-procurement IT vendor management = *anecdotal, slight or indirect* part of your job?
- Now work with defined process for specific coordination among Compliance, Procurement, IT, and Legal?
- Now work with defined process for specific coordination among Cybersecurity and other depts.?
- Heard or seen speculating or proposing re. creating such coordination?
- Actually physically visited the IT office area?
- Actually physically visited a data center, f/k/a "glass house"?

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Level-Setting: Quick Audience Profiling

2. YOUR EXPERIENCE WITH SOFTWARE COMPLIANCE AUDITS

- “Have a friend” had a painful, expensive, disruptive experience w/ a vendor’s *enterprise-wide, multiple products* software licenses compliance audit?
- “Have a friend” had a painful, expensive, disruptive experience w/ a vendor’s small scale (maybe small vendor, not huge b.u., or single product) software licenses compliance audit?
- Done moderate reading re. such audits?
- Attended seminar or webinar re. such?
- Attended my preso here last year?
- Read pleadings from a few of the dozens of U.S. software vendor-customer litigations?
- Read pleadings from a few of the dozens of U.S. software vendor-vendor litigations?

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Level Setting: Quick Audience Profiling

3. YOUR TRAINING / BACKGROUND

- Got Financial (Non-Software) Audit Training Or Experience?
- Got Contract Law Training Or Experience?
- Got Copyright Law Training Or Experience?
- Know What’s A “Declaratory Judgment” Lawsuit?
- Use Litigation Pleadings As Internal “Compliance Training & Coaching” Resource?

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Final Level-Setting: Quick Audience Profiling

4. YOUR FLUENCY WITH SOFTWARE INDUSTRY

- Read S.E.C. EDGAR filings, stock offerings?
- Read global captains of industry, global gladiators (Gates, Ellison, Beniof) any book by C.E.O.?
- Heard & understand the phrase “software eats the world”?

5. YOUR FLUENCY WITH SOFTWARE TECHNOLOGY

- Know what “Free & Open Source Software” (FOSS) is? Personally worked in any FOSS code or project?
- Read any business books re. software development? Or software industry?
- Had informal discussion with experienced IT manager (ops.)? In-office meeting and business agenda?
- Had discussion with experienced geek (software creator)? In-office meeting and business agenda?
- Your current personal life is dependent on software?
- Do banking only face-to-face (“F2F”) physically? Shopping? Mapping to drive to new destination only F2F physically?

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Quick Speaker Profile

- 39.5 Years 80% Software Work
- Both “Offense” (Vendor Work) & “Defense” (Customer Work)
- In-House @ 6 I.T. Vendors; Twice as G.C.; Once V.P. I.P. Development
- Blended, Hands-On Roles (Mongrel) (Product Dev., Sales, etc.)
- Failures Insight: Initiated Audits of Licensees In 1st Job, Yielding \$\$\$s
- Failures Insight: 10+ “Software Asset Management” Conferences
- Failures Insight: Granular, Frequent, Expensive Pleadings “Mining”
- Failures Insight: Granular “Open Records” Requests Results
- Failures Insight: 36 “Post Mortem” Projects For Niche Insurer
- 200+ Talks in 5 Countries; 25+ Published Articles
- Houston Based, Austin Leaning, Globally Working
- “Preventive Law & Business Processes” & Training Passion

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“Begin With The End In Mind”: Conclusions

Bad News:

- Your Organization Is **Non-Compliant** (& Will Get Caught)
- Your Initial Software In-Licensing Likely Is Inadequate
- Your Post-Signing Software Licenses Administration Is Inadequate
- Software Vendors Are Motivated & Resourced To Audit & Assess Big \$\$s
- Software Vendors Steer, Lead, & Stampede Your IT Colleagues/Clients

Good News:

- Others’ Painful Litigations & Other Disclosures Provide “Roadmaps”
- Sometimes Well-Prepared, Skilled “Pushing Back The Vendor” Works
- Cybersecurity’s Increasing Criticality = Ally & Motivator
- Career Expansion Opportunity!

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“Begin With The End In Mind”: Recommendations

- Know How Software Supply Chains = Multi-Tier, Mission-Critical, Deep, & Varied
- Know Why Software Licensing Is Often Partly Ambiguous & Broken
- Compliance Rules Arguably = More Varied & Faster-Changing
Than In Other Compliance Domains
- Advocate Software In-Licensing As Corporate Compliance Issue / “Turf”
- “Partner Internally” With CyberSecurity Leaders & Subject Matter Experts (Allies!)
- Educate & Motivate Peers With Software Audit “Pain & Suffering” Details
- Enable & Strive For Your Peers (& Your) Updating Licensing Skills
- Cross-Training = Do Software-Specific Homework, For Credibility & Enablement

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2. 10 Reasons Why You & Your Employer Should Care

- One software audit yielding pay-off attract others (Salespeople share “leads”)
- Compliance requires quality supply chain management, not hope, naivete, or assumptions
- Software runs your employer’s operations
- Software protects your employer’s continuity
- Software your employer’s impacts reputation & \$\$ future
- Software arguably drives future fate / health of US econ. (WSJrnl.)
- Firmware (software baked into chips) getting more scrutiny in business, gov’t., compliance: e.g., Super Micro / PRC
- Firmware may be remotely changeable & hackable
- Software runs much of your personal purchasing
- Software runs much of your personal finances

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3. Current Context: How Software Licensing Has Changed Significantly In Recent Years

Scope Clarification: Which Software?

- “On-Premises”
- Cloud / As-a-Service
- Combinations, Hybrids & Transitions
- “Open Source” (How Certain Are Your IT Folk?)
- “Home Grown” (Really?)

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Lic'g. Options / Scenarios, Models, Vocabulary

- “Enterprise” Based
- “Site” Based
- “End User” Based
- Hardware-Based: # “Cores”
- Usefulness Based (e.g., ## \$\$s Processes Via Using)
- Other Variations
- Combinations / Hybrids

PLUS Varying Support Services Models:

- “Silver” v. “Gold” v. “Platinum
- Partly In-Sourced Or Not
- Other Variations

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What Do You Get, When You Get “Software”?

- “The Application” (Really An Aggregation!)
- Sometimes, An Application Suite
- Often “Keys” (Locking Possible Usage To Purchased Parameters)
- “Glue Code” & Utilities To Interoperate With Others’ “Apps”?
- (Varying) “Tech. Support”
- Faster, Automated Links: “API’s” (Application Programming Interface)
- “E.T. Phone Home”? (Vendor’s Auto-Monitoring & Reporting!)

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Context: Megachanges In “Software Supply Chain”

Past	Now
Very High % Of Code Vendor-Written	Very High % Licensed In From “Upstream”
Nearly All Code Proprietary; Little “Public Domain”	Many, Varied, Increasing “Open Source” Components
Operational Assurance Via Everything On-Site	App & Much Hardware Away At Vendor’s Site(s)
Procurement Requires Tech. Expertise By Specialists; Computers Are Large, Expensive, & Cordoned Off in “Glass Room”	“Rogue Buying;” “Trialware;” Computers In Every Employees Pockets
Procurement = Paper, Ink-Proceeded, Executive-Signed	Licensing = Electronic, Signatory Not V.P.

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Today’s Focus = “On-Premises” Software, But Remote “Software-As-A-Service” (“SaaS”) Merits Compliance Professionals’ Involvement Too!

- Which Data Are Out-Loaded?
- Who Owns Newly-Created Data?
- What Are Specific Rules For Data Secure Custody?
- How Will Data Custody Be Audited & Confirmed?
- By Whom, With What Skills, With What Tools, With What Frequency?
- Any Out-Loaded Data Owned By Business Partners & Covered By NDA’s?
- To What Extent Are SaaS Vendor’s Tasks & Resources Outsourced?
- How Will SaaS Vendors’ Subcontractors’ Compliance Be Confirmed?

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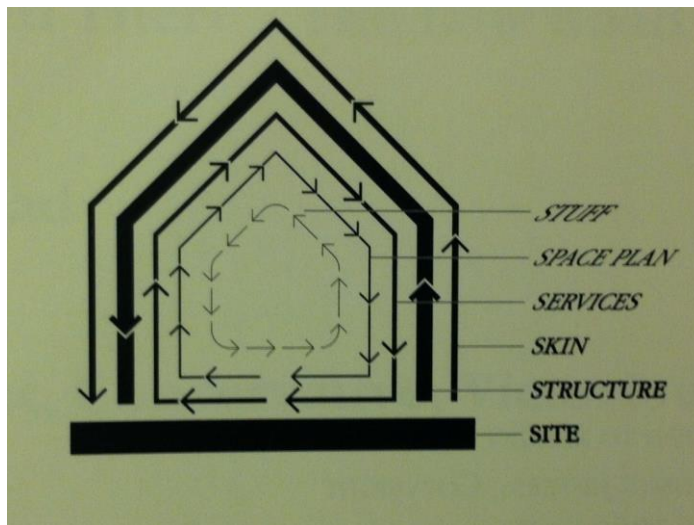
“I / We Got This”? (Nope)

5. Trend-Watching, Forecasting, Assessment:

10 Reasons Software License Compliance Is Risky (& Getting Riskier)

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Software Licenses Compliance =
Targeting A Moving Target



Concept & Graphic
From The Book
How Buildings Learn:
So How Does
Your Compliance
Strategy, Leadership,
& Risks Mitigation
Learn?

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What Are Software License “Compliance Audits”?

- Indicator Of Gaps In Other Corporate Controls? E.g., GDPR?
- New Threat To CyberSecurity (“E.T. Phone Home” Features)?
- Threat To Corporate Brand & Reputation?
- New Threat To Regulatory Compliance For Some Customers?
- “D.J.’s”: Dozens Of “Declaratory Judgement” Lawsuits By Customers V. Vendors?
- New & Growing Threat To I.T. Budgets, Action Plans, & Mergers?
- New 7- & 8-Figure Line-Item Unplanned Spend For Many? 9-Figure?
- New & Growing Operational Threat To I.T. & Overall Operations?
- New, Key “Sales Channel” & Profits Source For Software Vendors?
- New, Growing Spotlight On I.T. Procurement Quality Questions?
- New Driver For Acquisitions & Mergers Of Software Companies?
- New Opportunity For Compliance Career & Responsibilities Growth / Expansion?
- Answer: All Of The Above!!!

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Who Is Doing It? (Which Vendors Audit Aggressively?)

Answer: Your Organization’s Suppliers (& More Each Year)!

- Oracle (Including Many Prior Independent Vendors)
- IBM
- Microsoft
- Micro Focus (& Acquired Attachmate, HPE, etc.)
- Open Text (“Roll-Up” Of Many Prior Independent Vendors)
- SAP?
- Adobe? • Autodesk? • Symantec
- Quest • ASG Technologies (f/k/a Allen Systems Group) • Infor (“Roll-Up” Of Prior Vendors)
- Versata (“Roll-Up” Of Many Prior Independent Vendors)
- Parametric a/k/a PTC
- VBConversions (Niche Tool For Programmers)
- Various Industry-Specific Or Silo-Specific Niche Vendors
- **Many, Many Others!!**

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Why Are Software Supply Chains Hard?: Fluidity – More Mergers, Acquisitions, Partial Divestitures, & “Roll-Ups” Than Other Industries



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Are Software Vendors Tougher & More Motivated
Than Government Compliance Regulators?

Software Vendor CEO Gets 10 Days In Jail For Arranging The
Slaughter Of A Neighbor's Free-Ranging Livestock



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Why Are Software Vendors So Motivated To Audit?
(Many Different Reasons – Including Repeated,
Confirmed Customers' Non-Compliance!)



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Differentiating The Animals In
The Information Technologies Zoo

**“Software Is Hard;
Hardware Is Easy”**

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Your Non-Compliance, Now

Traditional Purchasing & IT Processes
+ Vendor & Technology Changes --→
Have Landed Nearly Every Entity In
Contract Breach(es),
Copyright Infringement, &
Security & Reputation Risk

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10 Reasons It's Hard (& Getting Harder): #1
Generalists Doing Specialized Work

- Let Car Salesperson Handle “All The Details” On Your Lease?
- Examples From Evidence (Actual Litigations)
- What = “Adequate Training”? Trade Groups’ Certifications

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10 Reasons It's Hard (& Getting Harder): #2 Ambiguous, Varyingly-Interpreted Contract Vocabulary!

- “Use”: Employees With Access Who Don’t Use = Free?
- “Core”: How Calculate Computer Capacity?
- “Assignment” & “Transfer” (Requiring Vendor Permission / \$\$\$)
- “Reasonable Customer Controls”
- “Use & Quality Monitoring Technology” (Hello “E.T. Phone Home”)
- Other

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Is Software Sourcing Cartoonish
In Your Organization’s Past, As In Many?



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10 Reasons It's Hard (& Getting Harder): #3

= Ks (Plural), ≠ K (Singular)!

- Segmented Contracting!
- Key Terms Away In Product-Specific Attachments
- Frequent “Battle Of The Forms” Surprises (E.g., Base K Loses)
- Product Specifications Often Never Seen By Legal
- Product Specifications = Iterative “Moving Target” (For Multiple Reasons)

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10 Reasons It's Hard (& Getting Harder): #4

Ongoing Amendments, Supplements & Addenda;
Unilateral Changing Of T's & C's
(Terms & Conditions) By Vendors

- Delivery “Cascade”: New Vendor's Technology Features & Versions
- Ecosystem Evolution & Adaptation: Changes Per Other Vendors' Changes
- Follow-On Post-“Sale” “Up-Selling”: New, Related Products & Services
- Follow-On Post-“Sale” “Up-Selling”: New “Seats;” Further Utilization
- Ecommerce's Legacy: “Watch This Space; We May Post New T's & C's”!!??

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10 Reasons It's Hard (& Getting Harder): #5 “Nested Dolls”: Software = Components Aggregation

- Software = “Supply Chain” Result, Never One Single Things
- Software = Iterative, “Slipstream” Delivered Multiple, Changing Versions
- Software = Collection Of “Make, ‘Buy’ (License For Sub-Licensing), Or Download Decisions
- Software = Significant % Third Parties’ I.P.
- Seen “Or Our Suppliers” In Warranty Disclaimer &/Or Liability Limitation?: Software = Hence “Flowdown” Obligations Set By Remote, Indirect Vendors
- Software = You’ll Never Who Created Some Components: “Open Source”
- Software = Fungible, Changing “DNA” Over Duration Of Your Use

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10 Reasons It's Hard (& Getting Harder): #6 No Physical Custody of Contracts

- “Um, Boss, We Can’t Find Those Contracts In Our Files”
- Electronic Contracting: --→ Business Benefits: Speed & Convenience
- Electronic Contracting: --→ Business Risks: Missing “Documents” (Commerce Now = Electrons, & ≠ Papyrus!)
- Electronic Contracting: --→ Business Risks: Differing Versions (Often No “One Source Of Truth”)
- Electronic Contracting: --→ Business Debates: Whose Electronic Files More Comprehensive & More Likely Accurate, Hence Controlling (Not Like Real Estate Leasing!)
- Compare lack of source code escrow: Dependence On Vendor Good Faith, Continuing Existence, & Permanent Precise Custody & Care Of Digital Material

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10 Reasons It's Hard (& Getting Harder): #7



"Software contracts are better than first-lien debt."

"... You realize a company will not pay the interest payment on their first lien until after they pay their software maintenance or subscription fee. We get paid our money first. Who has the better credit? He can't run his business without our software. ..."

[<https://www.forbes.com/sites/nathanvardi/2018/03/06/richer-than-oprah-how-the-nations-wealthiest-african-american-conquered-tech-and-wall-street/#6397d9263584>]

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10 Reasons It's Hard (& Getting Harder): #7

Impacts Of Vendor M&A; Private Equity, & "Roll-Ups"

- "Who's On First?; What's On Second, I Don't Know's On Third"
- "Dry Powder": Huge # \$\$\$ To "Deploy" In Mega Software-Only P.E. Firms
- Duration Of Your Software License Sometimes < Vendor's Lifespan
- New Owners; New Rules For Customer Management
- Example: *Phoenix Microsystems v. VMware*: Inter-Vendors Litigation: \$100,000,000 Demand, 3/27/15-6/12/17 Duration, 459 Pleadings

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Even Single Software Segments See Serial Mash-Ups

Example: IT Operations Management (ITOM) Software

“ ... **Growth by Acquisition.** Since 2015, serial acquirers like SolarWinds, Cisco, ServiceNow, Splunk, Datadog, New Relic, Flexera, VMware, and Nutanix have acquired 32 diverse startups. ...

In the last five years, Broadcom acquired CA Technologies for \$18.9 billion, Thoma Bravo purchased Connectwise for \$1.5 billion, KKR bought out BMC Software for \$8.5 billion, Elliott Management acquired Gigamon for \$1.6 billion, Cisco spent \$3.7 billion on AppDynamics, Micro Focus engineered a reverse merger with HPE Software for \$8.8 billion, NetScout purchased Danaher Communications for \$2.3 billion, and Thoma Bravo took Riverbed private for \$3.5 billion. Just these eight deals generated \$47+ billion ..”

<https://www.cdottrends.com/story/14432/tackling-itoms-single-glass-pain-problem>

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10 Reasons It's Hard (& Getting Harder): #8

Free & “Open Source” Software



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“FOSS” = Big, Impactful, Counter-Intuitive
& Growing Part Of Business Software & Operations



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10 Reasons It's Hard (& Getting Harder): #9 Which Document(s) Rule?: “Battle Of The Forms”

- Base Agreement?
- Past: Missing; Now: Necessary: Cybersecurity Specifications
- Product Schedule's Fine Print
- Customer's Purchase Order
- Vendor's Website: Initial (“Splash”) Screen / Page Text
- \$800,000 “Gotcha” If Customer “Drilled Down,” Despite Splash Page Assurances: Vendor's Website: Interior Pages Text
- “Clickwrap” Terms Upon Loading & Using Software

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10 Reasons It's Hard (& Getting Harder): #10

Inadequate Budgetary & Executive Commitment To
Digital Procurement Compliance:
Necessary SAM (Software Asset Management)
Tools, Staff, Visibility, & Skills

- Requirement: Software To Manage Software In-Sourcing
- Reality: Hard Problem, Unlike Real Estate: Digital Properties = Hard To Find, Differing Attributes, & Frequently Modified Or Replaced
- Reality: No Perfect “One Ring To Rule Them All”
- Reality: Large Transition From No Controls To Decision To Manage To Selection Of Tools To Finding & Loading Usage and “Entitlements” Data To Adapting To Vendors’ Changes and Ongoing “Buying”

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6. Good News: Better Practices:
10 Recommended Action Items For
Compliance Professionals To Help

Reducing Digital Dependency & Improving
Organizational Quality Control:

Better Practices:

Recommended, Rank-Ordered Action Items For
Compliance Professionals To Help
Purchasing, IT & Other Colleagues
See & Fix Software License Compliance

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10 Recommended Action Items: #1

Internal Analysis, Advocacy, Education & Persuasion

- Recognize Reality: Software = Your Business Digestion
- Redefine Challenge Scope: Software Management = Mandatory Skill & Controls Set (“Software Eats The World”)
- Not Just For Geeks; Defeat Dilbert Isolation & Untouchability
- Business Continuity, Not Exceptional Emergency-Scenario Disaster Recovery: Affirmative Actions To Achieve Ongoing Permission For Software Usage
- Flip Assumptions: From “We’ve Got This” To “We’re Sloppy & At Risk”

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10 Recommended Action Items: #2

Self-Audit, Seriously But Securely

- Consensus: Nobody Knows Well What Software They Possess
- Vendors’ Compliance Audits Are Inevitable, Increasing & Painful
- Prior Self-Assessment Enables Costs-Lowering Remediations
- Self-Audit Is Inherently Phased, Iterative, Unpredictable Duration & Steps
- Common Significant, Sloppy Error: IT Runs Audit, Yielding Granular “Bad News” Admissions Susceptible To Vendor Audit, Per Failing To Structure For Attorney-Client Privilege Non-Disclosure!
- • Technical Auditing Specialist Firms Don’t Warn IT “Let Us Contract, Report, & Get Paid Via Your Legal Counsel”
- • Software Vendors Subpoena & Depose “Your” Experts

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10 Recommended Action Items: #3

“Benchmark!”: Research Reality & Change Vectors

- Do “Business Epidemiology”
- Identify Other Organizations’ # \$\$s “True-Up” Pay-Outs,
- Identify Other Organizations’ # \$\$s Costs
- Identify Other Organizations’ # \$\$s Disruptions (# Month & Years Coping With Multiple Vendors’ Audits, Some Annual & For All Products)
- Identify Other Organizations’ # Tied-Hands (IT Projects & “Digital Transformation”
- Best Data: Hard-To-Find Software Litigation Pleadings
- 2d Best Data: Hard-To-Find Government Software Audits & Spending

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10 Recommended Action Items: #4

Overhaul Software Contracting

- Assume Inadequacy In Past & Current In-Licensing
- Expect More Changes & New Challenges In Vendors’ Practices & Terms
- Require Supplemental & Diverse Training For Responsible Individuals
- “From Each According To Their Skills”: Halt IT Inadequate Supervision
- Overhaul Procurement: Add Robust FOSS Due Diligence
- Overhaul Procurement: Add Cybersecurity Robust Exhibits
- Overhaul Procurement: Add New Change-Governance Terms
- Require Robust Review For Post-“Buy” Adds & Changes
- Note Megatrend: Reserving Software For J.D.-Trained Individuals

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Compliance Requires Pro-Active Advance Planning, Processes, & Action



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10 Recommended Action Items: #5 Ally With & Learn From Cybersecurity

- Cybersecurity Usually Has Budget (SAM Usually Doesn't)
- Cybersecurity Usually Has Board Visibility (SAM Usually Doesn't)
- Cybersecurity Usually Has Technical Savvy (Procurement Usually Doesn't)
- Cybersecurity Always Thinks Threats Modeling & Risk Mitigation (Procurement Usually Doesn't)
- Cybersecurity Usually Appreciates Operational Daily Dependence On External Vendors (Procurement Usually Doesn't)

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10 Recommended Action Items: #6

Learn & Adjust From Adjacent I.P.-Based In-Licensing Supply Chains & Pains

- 8-Figure Lesson In Oilpatch Data Licensing: License Transferable At Customer Choice Upon Merger, Without Vendor Permission (Payoff)?
- Did We Do Due Diligence Re. Scope, Duration, & Conditions Of Use License, Before Deployment?: Photography Licensing
- Care In Calculating Costs: Interpreting Patent Licenses

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10 Recommended Action Items: #7

Learn FOSS

- Always Assess Payment-Free Alternative Sources
- Actively Participate In FOSS Policy/Process Group(s)
- Recognize “Free” ≠ No Rules, ≠ Unconcealable, ≠ Prudent, ≠ No Operational Risk, ≠ No Adverse Publicity Risk
- Monitor Cybersecurity Risk Assessments
- Use Up-Skilling to Force Increased Vendors Disclosures & Assessments Of “Upstream” Dependencies & Risks

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10 Recommended Action Items: #8

Enable & Utilize Attorney-Client Privilege (In USA)

- Vendor Audits Are Coming & More Extensive
- Vendor Audits Are Forceful (Partly Per Deploying “Big 4” Purportedly Independent Global CPA Firms)
- You Think Government-Employee Regulators Can Be Tough?:
Ambiguous Contracts + Missing Contracts + Evolving Contract Document Sets + Vendors’ Tough Revenue/Profit Goals + FOSS Competitive Threats To Vendors + Start-Ups & New Market Entrants Competitive Threats To Vendors --→ Strong Incentive & Strong Likelihood Finding Non-Compliance --→ Painful Pay-Off Demands From Skilled, Well-Resourced, Tough Suppliers

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10 Recommended Action Items: #9

Invest in SAM Talent, Discipline, Processes, & Tools

- “Shoeware” + Spreadsheets = Inadequacy; SAM App(s) = Necessary
- Trade Groups: Events: IBSMA, ProcureconIT, we-connect SAM Summit, IAITAM
- Trade Groups: Certifications?: Debatable
- Internal Private Confidential Workshops (+ Strategy Session + Process Overhaul Working Meeting, Possibly Off-Site)
- “Business Epidemiology” On Others’ SAM “Morbidity & Mortality:
- • Mining (Learning From) Third Parties’ Software License Compliance Audit Litigations
- • Open Records Research To Benchmark Governments’ Audit Spends

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Learning From Among-Vendors Audit Fights: Phoenix Tech. v. VMware (i.e., If Specialist Vendors Can't Agree, It's Hard!)

1/17/17 Joint (Agreed) Statement Of The Case

"...Phoenix asserts that ... VMware exceeded the scope of that license and committed copyright infringement by incorporating Phoenix's BIOS into VMware products that do not fit within the definition of Licensee's Products and that violate other terms of the Agreements. ... willful infringement ... that ... continues to this day VMware asserts (1) that the agreements permit it to modify and use the BIOS in its products, (2) that the VMware products meet the contract definition of Licensee's Products; (3) that Phoenix has always known about how VMware uses the BIOS and never complained, and (4) that Phoenix has made up the copyright infringement claims to unfairly benefit from VMware's success. ..."

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Are External Consultants "Conflicted"?: Software Customers Must Identify & Clarify Reseller & Consultant Multiple Constituencies & Possibly Inconsistent Loyalties

End User 8/4/16 Motion To Compel, After \$695K Payment:

"... Microsoft responds that it will produce its agreements with Anglepoint that relate to the Reading True-Up and/or this litigation, with the exception of the confidential Joint Defense Privilege and Common Interest Agreement between Microsoft and Anglepoint. ..."

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When Do We Know “Who Was Right?” Or “Who Won?”: New Phase In SAM = Lingering Appellate Litigation Efforts

- 12/22/16 Calif. Appellate Court Ruling In *Glovia v. Acuant*

“ ... [Initially, below, at the trial court] The jury returned a verdict in Glovia's favor on ... conversion ... awarding Glovia \$1,196,000 in compensatory damages and \$650,000 in punitive damages. The trial court awarded Glovia attorney fees of \$1,474,151.75 ... Glovia's expert ... calculated damages by determining the modules ... using in 2003 and the price of those modules. ... the license fee would have been \$650,000, the interest .. as of ... trial was \$514,234, ... total ... \$1,164,254 (actually \$1,164,234). ... we affirm the damages award. ... The punitive damages and attorney fees awards are reversed. ...”

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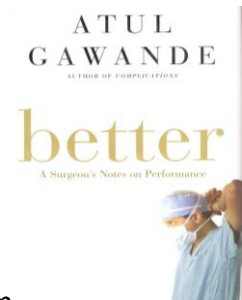
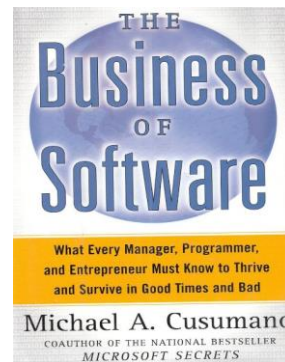
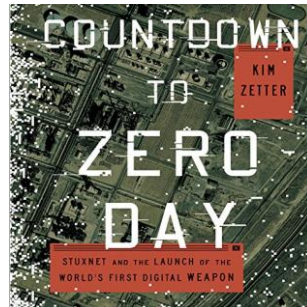
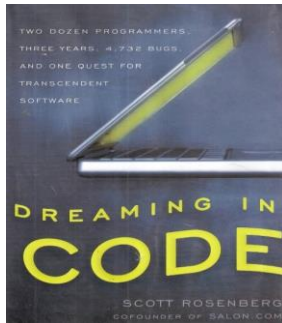
10 Recommended Action Items: #10

Personal Cross-Training Resources: Post-Conference Easy-Digestion “Homework”: “Just 1 Overview Article”

- December 2017 Article
- Litigations Survey & Remedial Recommendations
- “Software License Non-Compliance and Audits: Growing Hazards and New Action Items” (10 Pages; 8 Footnotes)
- By Speaker & Author Of American Bar Association’s Software Licensing Treatise
- Available From Publisher (Association Of Corporate Counsel) (Segment Of *The Docket Magazine*)
- Or Write “12/17 Article Please” On Your Business Card & I’ll Send It
- Email Me & I’ll Send It

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10 Recommended Action Items: #10 Personal Cross-Training Resources: Post-Conference Easy-Digestion “Homework”: Books



Or email me for selected bibliography, at memphishank@gmail.com

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7. Conscious Creative Careerism To Create Clear Chances To Contribute

- Consider Inter-“Silos” Synchronization As Necessary Career Quality Or Career Advancement Skill
- • One Candidate To Contest Against Chaos: “R.A.C.I.” (The “Responsible, Accountable, Consulted, Informed” Process Methodology) (E.g., Consider Wednesday 9/18 10:15-11:45 A.M. Session W13 “Designing a Compliance and Governance Model for Today’s Hi-Tech Business Environment”)
- Become At Least Partly “Multi-Lingual”: Consider “Digital Competence” As Core Competency

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Q&A (& Debate?)

Thanks; And I Hope To Run Into You In The Future (Professionally)

Henry W. (Hank) Jones, III
Law Office of Henry W. Jones, III -
and-
Intersect Technology Consulting
2246 Woodland Springs St.
Houston TX 77077 USA
memphishank@gmail.com
mobile 512-695-4673



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