



Open Standards - Open Source

The Business, Legal, and Technical Challenges Ahead

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THE *Open* GROUP

"Are We 'There' Yet?"

Predicted Challenges and Suggested Tools For Better Coping with Open Source Discovery, Deployment, Experimentation By Our Clients, Suppliers, and Other Constituents

Open Standards – Open Source The Business, Legal, and Technical Challenges Ahead

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" ... The case, regardless of its outcome, also points to a broader issue that will not go away:
how to manage the meeting of two worlds of programming. ..."

New York Times 6/14/03 article mainly re. the SCO/Caldera v. IBM lawsuit (italics added)

What They Never Taught You At Harvard Law, Business, or Other Schools: The Scale, Duration, and Nuances of Organizational Educational and Change Projects

CEO of Publicly-Traded, Market-Leading Software Vendor in Working Session of Info. Tech. Trade Association Committee: "Why Do You Lawyers Worry So Much and Want To Develop Detailed Documentation and CYA?; Everybody in the Software Industry Knows Each Other and Doesn't Resort To Litigation" (1984)

What They Never Even *Tried* To Teach You At Harvard Law, Business, or Other Schools: Best Tools for Organizational Educational Challenges

Corporate Employee Training Sessions As Secret Key Competitive Resource

"Corporate Policies" and Other Perhaps Weak Reeds

When In Rome, Use Latin: Deploying Metaphors From Your Audiences Own Domain For Effective Education and Advocacy

For Finance Wonks: OSS and Similar Elements of M&A, Financial Reporting, and GAAP

For Sales Folks: “Features and Benefits; Foreseeable Objections and Persuasive Replies”

For Self-Styled Executives and Corporate Leaders: Memes from Recent Business Books

Other

What The Runts Used Against Schoolyard Bullies: Humor as Business Tool

Is Good OSS Management Like That (No Longer Funny) Joke About Teenage Sex?

Question from CEO of Just-Gone-Public Software Company (David Cole, My Boss at Ashton-Tate) Reviewing The Transfer Agent’s List of Shareholders: “Who Are All These People With Just 1 Share Of Our Stock?” Reply From His Head In-House Counsel (Me): “Plaintiffs”

What Do You Call Information Technology Product and Services Vendors Without Robust OSS Strategies and Processing Policies?: “Defendants”

Other

“Knowing What You Don’t Know” Might Mean “I Know Something You Don’t Know But Need To Know”: Effective, Relevant Deployment of Legal Training and Expertise

When To Use Dirty Words: Explaining *Res Judicata* To Clients and Other Constituents

Web-Delivered, Persuasive Evidence of “U.S. Justice Grinds Exceedingly Slow and Fine” At A Mere 7 Cents Per Page: Utilizing the PACER Data Bases

Which Analogies To Use and Avoid, To Communicate Utility, Cost Savings, New Rules, and Other Attributes of OSS?

Environmental Compliance

U.S. Labor Law: Diversity, Affirmative Action, Anti-Discrimination

“Open Sores” (1999 Columns by Ethernet Co-inventor and 3Com co-founder Bob Metcalfe in *InfoWorld*)

Mining Prior I.T. Trainwrecks

What’s Inside That Code?: *Computer Associates v. Altai*

Design, Coding, and Debugging Challenges for OSS Consultants, Counselors, and Other Leaders

Architecting Multi-Disciplinary Processes

Enlisting Deputies from Other Domains

Business and Legal Needs to Include Software-Fluent Intellectual Property Counsel

e.g., Sat. 6/14 *New York Times* article re. the SCO/Caldera v. IBM case noting Hewlett-Packard's executive-level 6-person OSS decision-making team, including i.p. attorneys

2 resources:

- "How a Poor Contract Sunk an Open-Source Deal", *Linux Journal*, August 2002, by the speaker, available at <http://www.linuxjournal.com/article.php?sid=6025>)

- "Contracts Are Software", Spring 1995 *Preventive Law Reporter* (originally published in *Bulletin of the Computer Law Association*, January 1995), by the speaker, available on request

Henry W. (Hank) Jones, III operates both a solo law practice and a technology business consulting firm, based in Austin, Texas, with clients scattered across the U.S. Hank is a 23-year veteran of the software and information technology industries.

Hank initiated and led the July 1999 OSS program at the Austin Software Council. He has spoken on OSS issues at many national and regional events, including the "Open Source Software Politics" panel at the 2002 SXSW/Interactive trade show, the 16th annual Computer and Technology Law Institute in Dallas sponsored by the University of Houston Law School, the AITP, and the panel "Is Open OK?" panel scheduled for 2003 convention of the American Corporate Counsel Association in San Francisco. He co-delivers full-day OSS workshops for the University of Texas at Austin's Software Quality Institute.

Hank has worked in blended legal/business roles on the senior management teams of three fast-growth, publicly traded information technology corporations, and as head counsel of two, i.e.,

(a) U.S. Robotics, as Vice President, Intellectual Property Development;

(b) QMS (\$300MM-revenue New York Stock Exchange developer/manufacturer of computer printers and printer software), as General Counsel and senior management "utility infielder"; and

(c) Ashton-Tate (microcomputer business software), during its IPO and its hypergrowth from \$20MM to \$180MM revenue), as head counsel and senior management "utility infielder".

Hank is the founder of full-day software licensing workshops at the University of California at Berkeley's Engineering School Extension.

Hank regularly conducts corporate contracts "re-engineering", risks audits, technology audits, in-house corporate training, and other information technology process and asset improvement projects. Hank often works as "second chair" counsel and intermittently as an expert witness in information technology-related litigation. He was awarded the \$1,000 national annual prize for individual achievement by the National Center for Preventive Law for his work in information technology risk management.

Hank has focused since 1980 on product/service design/development, sales, licensing, alliance, risk management, preventive law, distribution, marketing, international, intellectual property, corporate, finance, and other issues in software, Internet commerce, information, data communications, services, and other information technologies and markets.

His articles have appeared in *Linux Journal*, *Venture*, *Upgrade* (magazine of Software Publishers Association), *InfoWorld*, *InfoSystems*, *CD-ROM Review* (as legal columnist), *Publish!*, *WebTechniques* (later known as *New Architect*), *Software Publishers Association News*, *SoftShare*, *Small Systems World*, *Desktop Computing*, *CD Data Report*, Proceedings of Optical Publishing and Storage '87 Conference, Hypertext 1987 Conference, and other periodicals, and in books by Microsoft Press and other publishers.

Hank has launched and/or led industry panels at COMDEX, Uniform (global Unix conference), Software Mergers & Acquisitions Institute, and dozens of others.

He has spoken at over 150 industry and legal events, including UNIX Users Group, Software Publishers Association, High Technology Risk Management Symposium (10 cities), Licensing Executives Society, Practising Law Institute (Understanding The Intellectual Property License, 1998-2003), IEEE, ACM, ADAPSO, U.S. Congress Office of Technology Assessment, National Computer Security Institute, The Entrepreneurship Institute, Computers Freedom and Privacy '98, Information Industry Association, Andersen Consulting, EDPA, ASIS, SoftCon, ISCA, STC, COMMON, IQPC Conferences, IICS, NFAIS, ASM, AITP, DPMA, NCMA, Southeastern Software Association, University of Texas at Austin Center for Lifelong Engineering Education, Project Management Institute, University of Texas Masters in Technology Commercialization Program, IC2 Institute in Austin, American Corporate Counsel Association, American Intellectual Property Law Association, Austin Software Council (approximately 7 separate events), SXSW/Interactive (Austin) (approximately 5 events), Internet Developers Exchange of Austin, and others.

Hank handled Internet/Web, strategic alliance, software development, systems integration, outsourcing, health care, intellectual property, data communications, and commercial "computer law" matters for Accenture and Andersen. He also was in private practice in Austin (with Fulbright & Jaworski and Arnold White & Durkee), Atlanta, and Memphis.

His technology law articles have appeared in *Corporate Counsel Magazine* (American Lawyer publication), *Corporate Legal Times*, *Bulletin of the Computer Law Association*, *BNA Corporate Counsel Quarterly*, *International Computer Law Advisor*, *European Intellectual Property Review*, *Computer Negotiations Report*, *Preventive Law Reporter*, and the Tennessee Bar Association's *Journal of Copyright, Entertainment, and Sports Law*.

He serves on the Board of Editors of *The Cyberspace Lawyer*, a monthly professional publication, and previously served on the Board of Editors of *The Computer Lawyer*. He previously served as Chairperson of annual conferences of the Computer Law Association (1989 and 1999) and the Computer Law Section of the Georgia Bar Association (1987-1988). Hank has led and/or planned panels for events by the American Corporate Counsel Association, American Intellectual Property Law Association, Computer Law Association, Software Mergers & Acquisitions Institute (multiple years), Licensing Executives Society, American Bar Association Science and Technology Section, State Bar of Texas High Technology Litigation Seminar, Computers Freedom and Privacy, and other groups.

He has spoken at events by American Patent Law Association, Practising Law Institute ("Understanding The I.P. License," 1998-2003), Univ. of Texas Law School Intellectual Property Law Society (multiple years), University of Houston Law School Computer and Information Law Institute (2000-2003), American Bar Association Science and Technology Section (multiple years), University of Texas Law School Computer Law Conference (multiple years), Mealey's Information Technology Liability/Litigation Seminar, University of

Texas Law School Corporate Counsel Conference (multiple cities), (speaker and moderator), Austin In-House Counsel Group, American Law Institute of the ABA (ALI-ABA), European Study Conferences, American Conference Institute, World Trade Institute, Software Protection and Litigation Institute, Corporate Legal Institutes, Electronic and Software Publishing Seminar (Law & Business, Inc.), Corporate Counsel Committee of the ABA Business Law Section, Annual Southeastern Computer Law Institute, San Diego Bar Association, University of North Carolina Law School, University of Santa Clara Law School, Emory University Law School, Suffolk Law School, Atlanta Bar Association, University of Southern California/Prentice-Hall Computer Law Institute, and others.

Hank graduated from Duke University magna cum laude ('76) and from Vanderbilt Law School ('80).

This handout is intended to be supplemented by the speaker's live comments, should not be attributed to any client or other third party, and represents only a portion of the speaker's current personal opinions on this evolving topic.

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