

Practicing Law the 'Open Source' Way

"Generosity and a collaborative mindset are 'open source' values that can help lawyers not only achieve their goals, but also provide career satisfaction and the highest levels of client service," says Heather Meeker, a partner in O'Melveny & Myers' Silicon Valley office.

By Heather Meeker

"Open source" is a term that appears in the news a lot today. You may have heard about open source software, even if you don't exactly know what it is. We all use open source software every day—to send email, to browse the web, and to run our smartphones. Open source software is the lifeblood of modern technology and the backbone of the web. Open source licensing is a "pay it forward" model that uses the power of private property—the copyright law—to encourage people to share what they create. Open source software developers post their software on the web free of charge and allow other developers to use it, with the condition that they, in turn, make their improvements freely available to others. Some people call this a "gift economy," but however you name it, it has been a wildly successful model for developing software.

For years now, I have been specializing in open source software licensing law, and it's been a fascinating area of practice. As part of that practice, I have educated a lot of clients about how open source licensing works. But in the process, I've learned even more from my clients. And over these years, I've had



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the chance to think about how to practice law using the principles of open source.

Give a Lot, Get Even More

At first blush, the principle of zealous advocacy can seem incompatible with open source ideals. Open source is about generosity and collaboration. Law practice can use these principles as well, but lawyers may need to adjust their outlook to understand why. For example, any lawyer who develops a great form of agreement or checklist should share it freely. I've heard some lawyers say that this is giving away free service. Maybe so. But the more you give, the more you get. Over

the years, I've released all sorts of free legal materials. I offer free downloads of my book about open source licensing in business. I've even posted a series of online videos discussing open source topics. And while creating those materials did take up some non-billable hours, they have only made legal practice more rewarding, in both the personal and pecuniary sense. Freely sharing knowledge can help lawyers set themselves apart from their peers and build a brand as a subject matter authority. And I can tell you, from personal experience, that there are few things more delightful than getting an agreement to

review, and finding terms in it that you wrote yourself.

Open source software development works the same way. One of its benefits to developers is demonstrating their reputation as experts. In professional development, this is sometimes known as “self-credentialing.” It is a way to establish accolades through one’s own efforts, rather than having them conferred upon you by institutions—such as schools, or businesses or law firms. It is particularly attractive for those who might otherwise feel marginalized and unable to get admittance to institutions that grant traditional credentials.

Collaborate to Win

Open source is also about collaboration. Most law firms preach the gospel of teamwork. But the most effective lawyers realize their team extends beyond their colleagues and includes their clients—and even opposing counsel. Collaboration can be challenging, particularly when others might see you as an opponent or even an enemy. But stress and lack of collegiality are the true enemy. Advocating for our clients ultimately boils down to getting things done, and few projects are so small that they can be done alone. All lawyers—transactions lawyers and litigators alike—seek good results for their clients. But those results never happen without collaboration from others, on both sides of the matter.

Some people make the mistake of thinking that law practice is a kind of amped-up moot court contest, and that being the best lawyer wins the best results. While quality in practice certainly helps, everyone knows it is harder to negotiate good results with

unskilled opponents than skilled ones. Unskilled opponents in negotiations tend to dig in on issues that don’t matter. Unskilled litigants can file motions that are so wrong that it is difficult to even respond to them. Their reactions and tactics are hard to predict. So if you are truly the expert in the room, your best strategy is to help those around you understand the issues. And it’s always best to do that politely and respectfully, because any other attitude will put others on their guard and make them less likely to cooperate. In life, you don’t win by explaining why you want things your way. You win by explaining to the other side why they want it your way, too.

Critics Are Your Allies

Interaction between open source developers—which normally takes place online—is often blunt and critical, and that can be daunting, but it is ultimately in service of producing the best software. Collaboration often involves a healthy dose of criticism, and this can be tough for lawyers to swallow—especially young lawyers. We do not earn our J.D. without being extremely successful in school, and it can be discouraging to be taken down a peg at every turn. Young lawyers can wash out if they do not internalize the idea that criticism is a gift. The most successful lawyers find a way to balance their egos against their capacity to learn. That’s not easy for anyone. Lucky young lawyers will receive helpful criticism from their more senior supervisors. Unlucky young lawyers who receive mean-spirited criticism can turn that experience into an opportunity: learning how NOT to supervise others.

Learning by Sharing

Finally, one of the central principles of open source development is the marketplace of ideas. Open source software licenses allow anyone to create their own version of software, while encouraging collaborators to settle on a common version that represents best practices. We all do this in legal practice already. No one writes legal documents from a blank page. We build on forms and examples written by those who went before us. Over time, while each of us tweak our work to reflect our client’s preferences, we develop a working notion of what is “market” or expected. Knowing this is one of our most valuable skills in law practice. When clients set problems before you, they almost always ask, “What do most people do in my circumstances?” You can’t know the answer to that question without learning from others.

Generosity and a collaborative mindset are “open source” values that can help lawyers not only achieve their goals, but also provide career satisfaction and the highest levels of client service. And just as important, an “open source” ethos will, perhaps, help others in the process.

Heather Meeker is a partner in O’Melveny & Myers’ Silicon Valley office. Her corporate practice focuses on intellectual property and technology, with a particular focus on open source software. She is a respected authority in the open source software community and is a founding portfolio partner at OSS Capital, which invests in early-stage open source software companies. You can find her full bio here.