



“Stand Up for your Product”: Allocating Liability for Open Source Software

2017

Who has the “moral high ground”?



Vendor – See Indemnity as Tax



Customer – Sees Indemnity as Protection

But indemnities are not about what is right, but what is commercially reasonable



Economics – What is the most efficient way to avoid or resolve problems?

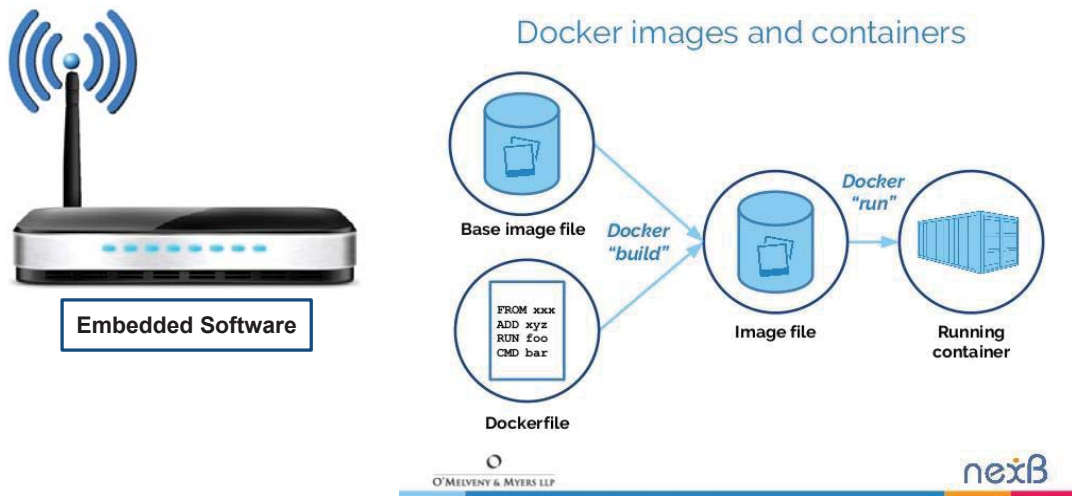
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Non Compliance



4

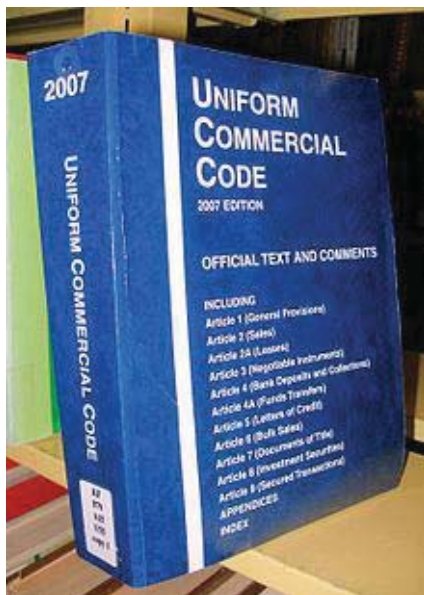
How is Open Source different?



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Modified UCC Approach



- § 2-312. **Warranty of Title and Against Infringement; Buyer's Obligation Against Infringement.**

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"Negotiating in the Open: Open Source Warranties and Indemnities in Transactions"