



The Dangers of Do-it-Yourself Escrow

Is it a good idea to manage a source code deposit yourself? Beware: For software escrow to be legal, many specific aspects have to be considered and follow-up work needs to be carried out.

"In the course of negotiations concerning the acquisition of ERP software, the producer has offered to provide us with the source codes in a sealed envelope. If we take their offer, what points do we need to consider?"

For source code escrow to be secure, the licensee has to make sure of four things:

1. Escrow Contract

To be prepared for a crisis, defining under which conditions a licensee may open the envelope is not sufficient. You have to be able to answer questions such as: What legal rights to the source code does the licensee receive? Who is liable for which errors and to what amount? What is included in the deposited material? Etc. If these questions are not unambiguously clarified, the legal security and usefulness of the data in the case of a bankruptcy is questionable.

2. Verification of the Escrow Material

Oftentimes, a sealed envelope or a lack of resources is the reason why the deposited material is not sufficiently checked when escrow starts. That means, however, that the deposited material might not be in a format or state that can be utilized by a third party. In order to be useful, the code must be

- complete and in working order,
- created in compliance with the standards and best practices of the respective programming language and technology,
- and the development environment, the essential components of the build-environment and the processes for maintenance, conversion to object code, assembly and implementation must be sufficiently documented.

3. Secure Storage of Escrow Material

Data media, such as CDs and DVDs, are susceptible to deterioration. Escrow agencies duplicate the escrow material on a regular basis (every 1-2 years) to avoid data loss. How can the problem be rectified in the case of a sealed envelope? What happens if the envelope gets damaged? Who is liable? There is a lot of risk involved.

4. Updating the Material

The material in escrow has to be kept up-to-date in accordance with changes to the application in use. But how? Who is responsible for the updates? In the following years, the material in escrow can become worthless if nobody remembers to update it. You cannot reach your aim of minimizing risk if you do not have proper escrow management.

Our Recommendation

Escrow agencies that provide all the requirements mentioned above provide professional escrow management. The licensee does not have to take care of anything. And you get that security for fees that are often only one to three percent of the license fees.