

## Proprietary Trap

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Why it is a bad idea to use a proprietary EHR?

A few weeks ago my wife went to buy some paint, which has nothing whatsoever to do with Electronic Health Records. My wife is more than a little obsessed with getting the upstairs "right", and she has spent a tremendous amount of time researching what paints would give her the look she was hoping for. By the time she went into Home Depot, she was well-versed in the differences between "egg shell" and "semi-gloss". She had a relatively complex question about the best methodology to remove the current paint, which could be lead-based. After hearing her question, the paint clerk grinned at my wife. "Whats so funny?" she asked. "Well, you sure seem to know a lot about paint..." he trailed off. It was obvious to my wife that he had meant to add "for a woman" at the end of the phrase.

Later as we were driving to get more paint supplies, I started to turn into Home Depot. "We are going to Lowe's" my wife informed me, with a tone that indicated the subject was not up for discussion. My wife had fired Home Depot. At least she fired the paint department at that particular store. I know it sounds ridiculous but I would like to discuss why she was able to do that. The reason is that Lowe's sells paint too. In fact, there are lots of places to buy paint. So if she wanted, my wife could fire hundreds of sexist paint salesman and still buy paint. If we could only buy paint from Home Depot, we would not be able to fire anyone.

You can fire your paint store, your dentist, your lawyer, your mechanic and even your doctor. You can fire them for any reason. Yet you cannot fire your proprietary EHR software vendor. Or at least, not without also changing the software that you use. So I guess you could fire your proprietary software vendor, but only in the sense that you could "fire" your mechanic, if it meant you were forced to buy a new car.

You cannot fire your proprietary EHR vendor because you never really owned the proprietary EHR that you paid for at all. (This can come as an uncomfortable realization to those who spent six figures to "rent" an EHR) Rather you were granted a license to use the software. That license dictated exactly what you could and could not do with the software. Among other restrictions, the license prohibits another software vendor from supporting the software that you paid for. EHR systems need constant updates because of industry changes. (Y2k, HIPAA, NPI, ICD-9) Yet only one organization, the original vendor, can support a proprietary EHR. What if some industry change for that company impacts your ability to get those updates? What happens if the company is sold? (Mysis, Medical Manager, IDX, A4) What happens if the company goes out of business? (Doctors Notes, Merge Healthcare)

Here is the answer from one company: We do not want to single one company out but this is from the FAQ section of a popular proprietary EHR. We can call them PPE for short.

### Q: What if [PPE] goes bankrupt? What happens to our data?

A: The data still belongs to you, and there is a clause in our contract that says that if [PPE] goes bankrupt, then we will either install the program onto your own server or dump all of your practice's data onto CDs for you so that you can have continued use of the program and data.

This is a pretty standard answer. Some proprietary vendors even go so far as to create what is known as "code escrow" which addresses the issue of source code. The idea is that if the company goes bankrupt, you could hire a bunch of programmers, reverse engineer the sourcecode, and essentially become your own vendor. Which is the equivalent of saying "if your paint supplier goes bankrupt, we will give you the formula for our paint so that you can easily make more paint. All you need to do is set up your own paint manufacturing plant, hire paint chemists, and become a paint vendor... for yourself".



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○ | Once you have paid a proprietary EHR vendor and started using the proprietary software, that vendor is in total control of the relationship.

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○ | A proprietary license essentially gives a vendor a permanent monopoly on software services, what company would not want that!

If a proprietary EHR vendor fails to deliver support for their product their customers only recourse is to migrate to another software package. Migrating from a defunct proprietary database format to something new can be very expensive. Imagine, you have an EHR or practice management system for 5 years, collecting a tremendous amount of patient data and then, for whatever reason, your vendor stops supporting your software. You will have to migrate, some major change is always coming and your vendor now does not support the next big change. This happens again and again; Y2K, HIPAA, NPI, and ICD-9 are all great examples of industry changes that required software updates. You are forced to buy software again, and pay for an expensive migration to the new system.

This relationship is called "vendor lock-in". Once you have paid a proprietary EHR vendor and started using the proprietary software, that vendor is in total control of the relationship. They can raise the price of support, they can abandon the software by refusing to support it further, or they can simply not answer the phone when you call for help. Your only recourse is to purchase another EHR and pay for a migration. After you have purchased your software the vendor knows that they only have to support your system well enough for you not to pay to buy a new EHR and to pay to migrate to that new EHR.

I am not slandering the quality of support of every proprietary EHR vendor out there. There are some vendors who have excellent support, today. But there is nothing to ensure that a proprietary vendor will always have good support. If something happens to a proprietary EHR vendor, then their customers are left holding the bag.

However there is now an alternative. Electronic Healthcare Software that is licensed under the GPL can prevent vendor lock-in. The GNU GPL or GNU General Public License, is a software license that is intended to make you equal owners with the vendor of the software. Some people market this kind of software as "Open Source" which sounds wonderful and perhaps meant something at one time. However, recently medical software companies have started selling proprietary software and calling it "Open Source". If you want the benefits that I am about to describe make certain that you get your software under the GPL.

Why is the GPL a better license? Put simply, it means that you can fire your EHR vendor but keep your EHR software. Suppose you install WorldVista EHR in your practice. WorldVista EHR is a GPL version of the Vista EHR that has just passed CCHIT certification. But, alas, you find that your vendor does not answer the phone, or respond to your requests for help.

Because WorldVista EHR is available under the GPL you have several options: 1. You can learn the software yourself, and make the changes yourself (Paint World Equivalent: Building your own paint factory) 2. You can hire a local IT firm to learn the software and then provide you with support and updates (Paint World Equivalent: Outsourcing the construction of your own paint factory) or, best of all, you can hire another vendor who already has WorldVista EHR expertise to support the software (Paint World Equivalent: Drive down the street to Lowes).

WorldVista is an exciting product, but here is a short list of EHR products that are available under the GPL; OpenEMR, ClearHealth, MirrorMed, WorldVista. There are other GPL EHR software projects than these, however, each of these projects has more than one reputable company that currently support them.

Normally that would be the end of my paper, but this is a debate. In order to save time, I will go ahead and counter some of the arguments that my opponent might make.

Argument One: GPL software is a good idea, but there is no way that in the real world GPL software will be as good as EHR X. Clinicians desperately need the great features of EHR X.



Response: First, the issue is not really about features, but control. Features can be funded, but after you sign a contract that takes away your control in exchange for software you are stuck. Assuming a clinic really did need EHR X I always encourage them to ask for the software under the GPL. Ask a proprietary EHR vendor if you can have their proprietary EHR under the GPL instead, and you will always get an answer that boils down to “the GPL is not good for us”. Of course its not good for the vendor! A proprietary license essentially gives a vendor a permanent monopoly on software services, what company would not want that! Second, this argument held a lot more water 5 years ago. Now, WorldVista EHR has passed the CCHIT certification. This means that at least one GPL system is certified to the same level as proprietary EHRs that costs hundreds of thousands of dollars. Its hard to maintain that proprietary EHR software is fundamentally better after a GPL EHR passed a certification created by consortium of proprietary vendors.

Argument Two: In order for EHR companies to create excellent EHR software they need profits. The GPL can force the price of software to nothing, eliminating the profits needs to move EHRs forward.

Response: Believe me, as an EHR vendor, I am a huge fan of huge profits! The question is not whether companies should profit but where. With GPL software the “money” for the vendor is in software support rather than software sales. GPL vendors make money when the software “runs” well not when it “sells” well. GPL vendors, like myself, are profit motivated just like everyone else. The difference is that I know if I provide poor service to a client he will instantly move to my competitor. So I invest in making my support better than my competitors, rather than investing primarily in sales efforts.

As for moving the software forward... The idea that software is expensive is an illusion that large software companies would love to maintain. Part of the genius of the GPL is that it tends to lower the cost of development because anyone can pitch in. No one party has to bear the burden of the entire cost of development. GPL software moves forward, it just costs a lot less and the customer gets to decide how the code moves forward.

Argument Three: The real issue is investment in interoperability standards like CCR and HL7. These standards allow medical data to easily move between different systems, proprietary, GPL or other. Using these standards it is easy to migrate to another vendor, which is the right way to address vendor lock-in.

Response: There are two problems with this argument, first it assumes that HL7 or CCR is a strong standard (like TCP/IP which runs the Internet) with a reasonable guarantee that different systems can import or export perfectly. Sadly these standards are not there yet. Second, this still ignores the cost of buying and installing new software. There should be no cost associated with firing a vendor.

Argument Four: You sell GPL software, you are biased!

Response: I do sell GPL software. The interesting thing about the GPL is that any vendor can use software that I have written to compete against me. There is nothing that stops GE, IDX, or McKesson from scoping up my life's work and offering it to their customers. In short, I am certainly biased, just like the proprietary vendor is who argues against me, the difference is that my customers can easily fire me and his cannot. In short, I am biased, but anyone who has an interest in pointing that out is biased too.

Secondly, I am firm believer in the “If you do not get help here, get help somewhere” idea. If a reader is convinced by my arguments but suspicious of my profit motive feel free to contact me for a list of my competitors who also support GPL software. Many of my competitors make use of GPL software that I have written, without ever having paid me to do so. The GPL allows them to do this, and the fact that others use my software without my permission is something I celebrate instead of resenting. I would rather lose business to GPL competitors than have pervasive vendor lock-in continue.

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