Law Office Technology
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Open the garden gates

MAKING THE CASE FOR LA COURTS TO ACCEPT E-FILING OF OPEN-SOURCE DOCUMENT FORMATS – ENDING THE TYRANNY OF MICROSOFT WORD

To the modern attorney, the digital tools of the trade may feel immutable, as if mandated by the Code of Civil Procedure itself. We draft in Times New Roman, we save in .DOCX, and we file in .PDF. These habits are reinforced by a web of court rules that, while ostensibly vendor-neutral, effectively herd the legal profession into a proprietary walled garden run by a single monopolistic software company.

Consider California Rules of Court, rule 2.105, which mandates that font styles in filed documents be "essentially equivalent to Courier, Times New Roman, or Arial." While the rule technically allows for "equivalents," the practical effect is to standardize the default font libraries of Microsoft Windows. Times New Roman itself is not a public utility. It is a proprietary asset and licensed to Microsoft for distribution with Windows and Office. Accordingly, competitors face a legal barrier to using the Court's standard, forcing users to find metrically equivalent substitutes in hopes of avoiding formatting errors.

Contrast this to California Rules of Court, rule 8.204 subd. (b)(3), which governs appellate briefs. That rule simply requires that the "font style must be roman." It does not list specific proprietary typefaces. This brand-agnostic wording is the better policy choice because it ensures legibility without implicitly endorsing a specific software vendor. It allows attorneys to use public, free alternatives like Liberation Serif without fear of rejection.

Unfortunately, many trial courts have moved in the opposite direction. They have converted the "nudge" into a shove. Los Angeles Superior Court requires the use of specific brand names for certain types of filings. While the local rules broadly require an "editable word-processing file," the Court's e-filing portal (Journal Technologies) enforces a stricter technical reality. Attorneys submitting proposed orders cannot complete the upload unless the file bears a Microsoft proprietary extension (.doc or .docx). (See Notice to Attorneys: New Electronic Filing Procedure for Proposed Orders in Civil Division Cases, L.A. Super. Ct. (Jan. 31, 2024).) This is not a written rule subject to judicial discretion. It is a hard-coded gatekeeper that forces every practitioner in the county to utilize Microsoft's intellectual property.

This pattern repeats across the state. The United States District Court for the Central District of California requires proposed orders to be emailed to chambers in "Word or WordPerfect format." (U.S. Dist. Ct., Local Civ. Rules, Central Dist. Cal., rule 5-4.4.2). San Mateo County explicitly requires a "Word version" of proposed orders in pretrial proceedings. (Dept. 15 Pretrial Order, Super. Ct. San Mateo County (2024).)

These rules are likely intended for judicial efficiency, yet they have the unintended side effect of reifying a monopoly. By requiring file formats and font metrics controlled by a single corporation, the justice system imposes a "Microsoft Tax" on every practitioner. It overlooks powerful, secure, and free alternatives.

A minor policy change is in order. California courts should explicitly accept the OpenDocument Text (.ODT) format alongside Microsoft's formats. This is not merely a technical preference, but a matter of attorney independence, data sovereignty, and long-term client protection. This change would be strikingly easy to implement given that Microsoft Word and Google Docs have supported the reading and writing of .odt files for years.

What is "free software" and is it enforceable?

We must distinguish two concepts regarding "free" software. "Free as in beer" (gratis) means the software costs nothing. "Free as in speech" (libre) refers to the freedom to use, study, modify, and redistribute the code to one's own liking. This is the central principle of Free and Open-Source Software (FOSS). The leading FOSS alternative to Microsoft Office is LibreOffice, but the argument here concerns the standard (.odt versus .doc), not just the specific application.

Contrary to popular tropes, FOSS is not a "Wild West" of amateur software. It is a rigorous intellectual property regime distributed pursuant to public licenses, such as the GNU Public License (GPL) (GNU General Public License, Version 3 (June 29, 2007) https://www.gnu.org/licenses/gpl-3.0.html) or the MIT Open Source License (*The MIT License* https://opensource.org/licenses/MIT). The "License" acts as a constitution, granting broad rights subject to specific restrictions.

Crucially, in *Jacobsen v. Katzer* (Fed. Cir. 2008) 535 F.3d 1373, 1381 the Federal Circuit held that these open-source license terms are enforceable copyright "conditions" rather than merely contractual "covenants." This distinction is dispositive: If a user violates a condition, they exceed the scope of the license and become a copyright infringer. This doctrine was affirmed in *Bitmanagement Software GmBH v. United States* (Fed.Cir. 2021) 989 F.3d 938, 950–951, where the Federal Circuit found the U.S. Navy liable for infringement for copying software without complying with a condition precedent. While courts construe these licenses strictly (see *Photographic Illustrators Corp. v. Orgill, Inc.* (D.Mass. 2019) 370 F.Supp.3d 232, 249 [finding an attribution requirement was merely a covenant]), the FOSS ecosystem represents a mature legal regime. It respects intellectual property while preventing any single vendor from fencing off the commons.

The illusion of openness: .DOC and .DOCX

The legal profession's reliance on Microsoft formats is complicated by the legacy .doc format. This binary format stores data in complex codes difficult for other programs to interpret. (DOC vs DOCX: Main differences and similarities, Adobe https://www.adobe.com/acrobat/resources/document-files/doc-vs-docx.html). In 2007, Microsoft shifted to .docx, based on the Office Open XML (OOXML) standard. Microsoft itself created OOXML as an alternative to the widely adopted open standard XML. This switch meant that while some of the .docx specification is notionally "open," the specification is inextricably tied to the legacy behavior of the earlier binary format. The OOXML and .DOCX standards are incredibly complex and designed to preserve every quirk of Microsoft's history. (DOCX Strict (Office Open XML), ISO 29500-1:2008-2016, Libr. of Cong. (Sept. 6, 2024) https://www.loc.gov/preservation/digital/formats/fdd/fdd000397.shtml.)

Consequently, a complex pleading caption in .docx format (replete with line numbering and pleading rails) typically shatters when opened in non-Microsoft software. This is not a failure of the alternative software. It is a feature of the OOXML standard's complexity, which effectively penalizes anyone leaving the Microsoft ecosystem.

In contrast, the .odt format was designed from the ground up as an XML-based, vendor-neutral standard. An .odt file preserves fidelity across different operating systems better than its commercial counterpart. By treating .docx as the de facto standard, courts enforce a vendor lock-in that renders true interoperability impossible.

Digital archival and "format rot": The Library of Congress standard

Proprietary file formats are ephemeral. A WordPerfect file from 1995 is difficult to open today, and a Microsoft Works file from 2000 is practically unusable. This phenomenon (known as "format rot") poses a risk to the long-term integrity of the judicial record. The Library of Congress (LoC), the nation's premier authority on digital preservation, has codified this risk in its Sustainability of Digital Formats policies, which evaluates file formats based on seven sustainability factors including disclosure, adoption, transparency, and external dependencies. (Sustainability of Digital Formats: Planning for Library of Congress Collections, Sustainability Factors, Libr. of Cong. (2025) https://www.loc.gov/preservation/digital/formats/sustain/sustain.shtml).

The Library emphasizes that transparency is enhanced if textual content is encoded in standard character encodings and stored in natural reading order. (*Ibid.*) Proprietary binary formats (like the legacy .doc) or complex, obfuscated XML schemas (like strict .docx) often fail this test because they require specific, commercial software to interpret the data correctly.

Furthermore, the Library of Congress explicitly warns against formats that rely on external dependencies. Specifically, it warns against the "continued existence of a single commercial vendor" on which entire archives are standardized. (*Ibid.*) When a court mandates a proprietary format, it is wagering the public record on the financial solvency and technical roadmap of a single corporation. If that vendor changes its licensing model, "sunsets" the software, or faces insolvency, the public loses access to its original record.

This concern is further amplified by the Library's 2024-2025 Recommended Formats Statement, which introduced "digital accessibility" as a key evaluation criterion. (*Recommended Formats Statement* 2024-2025, Libr. of Cong. (2024) https://www.loc.gov/preservation/resources/rfs/.) Open standards like .odt are inherently structured using clear XML tags. This makes them superior for screen readers and accessibility tools compared to ad hoc binary structures.

The .odt extension is not merely an alternative application's file type. It is a certified international standard (ISO/IEC 26300). (ISO/IEC 26300:2006 Information technology – Open Document Format for Office Applications (OpenDocument) v1.0). An .odt file is a simple ZIP archive containing human-readable XML text. Even if LibreOffice vanished tomorrow, a user could unzip an .odt file and reconstruct the legal text using basic, open-source tools. By standardizing on open formats, courts ensure the legal record remains accessible regardless of which software company dominates the market in 2050.

Telemetry and client confidentiality

The choice to use FOSS is no longer a fringe preference of hackers; it has become a necessary safeguard against the dominant proprietary model, which has become predatory. The modern "walled garden" exemplified by Microsoft's Office 365 Suite, is constructed on four pillars: invasive telemetry, mandatory subscriptions, planned obsolescence, and forced cloud dependency. Just as the law eventually caught up with the excesses and abuses of the industrial age, future generations may well come to view these aggressive retention strategies as the defining consumer abuses of the digital era.

Microsoft benignly defines telemetry as "diagnostic data," collected from a user's device, software configuration and "connected experiences." (Required diagnostic data for Office, Microsoft Learn (Dec. 2, 2025) https://learn.microsoft.com/en-us/microsoft-365-apps/privacy/required-diagnostic-data). For attorneys, this is chilling. "Connected experiences" involve sending content to the cloud for analysis. While Microsoft (NASDAQ: MSFT) offers privacy assurances, transmission in itself creates vulnerability. (Microsoft Privacy Statement, Microsoft (Oct. 2025) https://www.microsoft.com/en-us/privacy/privacystatement; see also Manage privacy controls for Microsoft 365 Apps for enterprise, Microsoft Learn (Oct. 22, 2025) https://learn.microsoft.com/en-us/microsoft-365-apps/privacy/manage-privacy-controls.) In a legal practice, a word processing application should function as a passive tool (like a typewriter). It should not be an observer constantly "phoning home" to remote servers.

This background harvesting turns a professional tool into a surveillance device. It happens automatically and often without the attorney's knowledge. For a profession bound by Business and Professions Code section 6068,

subdivision (e)(1) (the duty to maintain client confidence "at every peril"), using software that inherently leaks usage data to a third party is a precarious ethical position.

Subscription lock-in, planned obsolescence, and cloud dependency

The rapid rise of telemetry has corresponded with a shift from software ownership to perpetual subscription. Attorneys no longer "buy" Microsoft Word. They become perpetual "renters." If a firm stops paying, the software enters reduced functionality mode, which effectively holds their work product hostage.

This dependency is compounded by planned obsolescence. As of October 2025, Microsoft has "sunset" support for its Windows 10 operating system, meaning it ended security updates for hundreds of millions of computers. The upgrade from Microsoft Windows 10 to Windows 11 enforces arbitrary hardware requirements (specifically the TPM 2.0 chip) that render millions of functional computers obsolete. Analysts estimate the end of Windows 10 support could generate 240 million PCs' worth of e-waste. (Jessop & Caddy, The End of Windows 10 Support Could Turn 240 Million PCs into E-Waste, Canalys (Dec. 21, 2023) https://www.canalys.com/insights/end-of-windows-10-support-could-turn-240-million-pcs-into-e-waste.) The Public Interest Research Group (PIRG) has characterized this as the "single biggest jump in junked computers ever." (Gutterman, PIRG petitions Microsoft: Don't junk millions of computers, U.S. PIRG (Oct. 2023) https://pirg.org/edfund/articles/pirg-petitions-microsoft-dont-junk-millions-of-computers/.)

Furthermore, the Windows 11 setup process is notoriously coercive. It prevents users from completing installation without creating or signing into a Microsoft account. (Windows 11 Home edition requires internet connection and Microsoft account, Microsoft Support https://support.microsoft.com/en-us/windows/windows-11-system-requirements-86c11283-ea52-4782-9efd-7674389a7ba3.) The system then arrives cluttered with non-removable news widgets or advertising links serving corporate partners rather than the users.

Finally, the forced march toward cloud dependency continues. Modern Word versions often default to saving attorney work product to company servers like OneDrive rather than the local machines. The American Bar Association's Formal Opinion 477R advises lawyers must make "reasonable efforts" to prevent unauthorized access to client data. (ABA Comm. on Ethics & Prof. Responsibility, Formal Opn. 477R (2017) (Securing Communication of Protected Client Information).) Storing data on third-party servers subjects it to service terms, security failures, and possibly even subpoena responses the attorney may never see.

The economic case for access to justice

This "rentier" model exerts constant pressure on overhead. In the past, software was a capital asset (a firm purchased a license once and used it for years). Today, software is a recurring operating liability. Because solo practitioners and small firms operate on thin margins, every dollar spent on non-recoverable overhead must be recouped through fees.

Consider the math for a modest five-attorney firm. A standard "Microsoft 365 Business Standard" subscription costs approximately $12.50 per user monthly. (Microsoft 365 Business Standard, Microsoft https://www.microsoft.com/en-us/microsoft-365/business/microsoft-365-business-standard.) Over 10 years, that firm pays $7,500 just to type its routine pleadings and form. The "Business Premium" tier nearly doubles this amount to over $13,000. (Microsoft 365 Business Premium, Microsoft https://www.microsoft.com/en-us/microsoft-365/business/microsoft-365-business-premium.) These figures assume prices remain static. Furthermore, these costs are not limited to the sticker price. The mandatory cloud features discussed above introduce unpredictable variable costs for storage overages and data retrieval.

Conversely, LibreOffice costs nothing. It can be installed on unlimited devices without tracking licenses or fearing an audit. For a solo practitioner serving low-income clients, saving thousands of dollars in overhead could be the difference between taking a pro bono case and rejecting it.

International precedents: The pursuit of digital sovereignty

Governments worldwide are recognizing that software dependency creates strategic vulnerability. In response, European nations are pivoting toward "Digital Sovereignty," thereby prioritizing control over data and infrastructure above administrative convenience.

In April 2024, the German state of Schleswig-Holstein announced it would replace Microsoft Windows and Office with Linux and LibreOffice on 30,000 government computers. (The Big Open Source Vision at Schleswig-Holstein, Linux Professional Institute (Apr. 15, 2024) https://www.lpi.org/blog/2024/04/15/the-big-open-source-vision-at-schleswig-holstein/.) The state's officials framed the decision not merely as a cost-saving measure but as a necessity for democratic independence, stating, "Independent, sustainable, secure: Schleswig-Holstein will be a digital pioneer region." (Connatser, German state ditches Windows, Microsoft Office for Linux and LibreOffice, The Register (Apr. 4, 2024) https://www.theregister.com/2024/04/04/germanys_northernmost_state_ditches_windows/.) By decoupling its infrastructure from a single U.S.-based vendor, the state protects its data from foreign jurisdictional reach and ensures long-term fiscal autonomy.

This move follows the path blazed by the French Gendarmerie Nationale, which migrated 90,000 workstations from Windows to FOSS operating systems. The transition reportedly reduced the agency's Total Cost of Ownership (TCO) by 40%, saving millions of euros annually by eliminating licensing fees and extending hardware lifecycles. (French Gendarmerie: "Open source desktop lowers TCO by 40%," Interoperable Europe Portal (Sept. 30, 2013) https://interoperable-europe.ec.europa.eu/collection/open-source-observatory-osor/news/french-gendarmerie-open-sou; Extremadura to transfer LinEx to the community, Interoperable Europe Portal (Aug. 22, 2013) https://interoperable-europe.ec.europa.eu/collection/open-

source-observatory-osor/news/extremadura-transfer-linex.)

Switzerland has codified the digital sovereignty movement into black-letter law. The "Federal Law on the Use of Electronic Means for the Fulfillment of Government Tasks" (EMBAG), enacted in 2023, mandates that software developed by or for the public sector must be open source. (New Open Source law in Switzerland, Interoperable Europe Portal (May 30, 2024) https://interoperable-europe.ec.europa.eu/collection/open-source-observatory-osor/news/new-open-source-law-switzerland.) Enshrining the principle of "public money, public code," the law ensures that taxpayers retain ownership of the digital tools they fund. Even the Swiss Federal Supreme Court utilizes .odt file formats for its internal records management, demonstrating that high-stakes legal environments can function without proprietary dependencies.

At the supranational level, the European Union adopted the Interoperable Europe Act in 2024. (The Interoperable Europe Act: Implications and impact on EU's digital future, European Data (Apr. 15, 2024) https://data.europa.eu/en/news-events/news/interoperable-europe-act-implications-and-impact-eus-digital-future.) This regulation creates a framework for public administrations to share IT solutions across borders, with a specific mandate to prioritize open-source software to prevent vendor lock-in. These initiatives demonstrate that open standards are not a fringe preference for hobbyists; they are the preferred instrument of sovereign governments seeking security, resilience, and fiscal responsibility.

The solution is policy, not just software

The legal profession need not remain indentured to a monopoly. By refusing to accept the .odt format, courts fortify a walled garden. Accepting the .odt standard is a small technical change with symbolic weight. It signals that our legal system values security, stability, and independence over corporate convenience. It is time to open the garden gates.

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