

Audit your software licences or it could be a licence to print money

Most organisations have had to acquire software licenses to carry out their business functions. The essential prerequisite is always the same, namely making sure you have a comprehensive record of those licenses the company has acquired, their duration and their terms.

As a media firm, we have seen that different organisations have different approaches to enforcing the terms of their licenses but the starting point is to review the terms of any license that has been granted. Most licenses contain an audit provision to ensure that the terms of the license are being adhered to. Businesses have records as to whom has acquired their licenses so it is relatively straightforward for the Licensor to carry out a review of existing purchasers of licenses and indicate an intention to carry out an audit, either (1) as a means of securing further revenue (by showing that further licenses are needed) as the licensee has failed to upgrade its licenses for e.g. new hardware that they might have acquired, or (2) to try and market on the back of the audit a new product which the licensor might have developed which is more advanced.

The licensor will be quick to check the terms of the license sold and, whilst in many instances they might have sold perpetual licenses, that license was often for a specific use or hardware which the licensee might have long since forgotten about or disposed of. For the licensee, they should, in these cash restricted times, consider both the asset bank of existing licenses they might have bought (do you have a license register?) and how to invest in the future given the rapid advances in technology.

We would recommend that all small, medium and large organisations carry out regular reviews of their existing software licenses to see whether they are under or over licensed, or whether they are able to renegotiate packages when changing technologies. Computer systems can be one of the largest single investments in small businesses and if the owner of the licenses is unaware as to the specific terms (duration, utilisation, integration) it is unlikely the licensor will be equally vague.

In our experience, organisations have taken a direct approach in terms of identifying infringers of their copyright. One organisation waged a campaign of spot checks by sending in an investigator to see whether or not the terms of the license had been complied with by the user. A simple "sting" operation will verify whether or not there has been an actual infringement. The compensation awarded against an identified infringer can be substantial and there is the possible draconian consequence of criminal proceedings. Whilst this seems a heavy handed tactic on individual infringers, it is quite a reasonable tactic to deploy against businesses. A hefty fine in these more financially restricted times is the last thing that a small business needs to deal with. Equally, large businesses, when faced with a substantial software audit, could be looking at massive fees for further licenses required to become compliant with the licensor's requirements. This can create substantial business disruption and a large financial liability for historic use as well as dramatically reducing possible budgets for future investment in IT.

There are simple steps that businesses should undertake in advance of the unwelcome notification of a software audit:

Identify one person in the organisation to review the licenses to identify:-

- (i) what they relate to;
- (ii) their duration;
- (iii) method of renewal; and
- (iv) audit requirements.

Whilst these reviews might seem self evident and an unnecessary expenditure of time when businesses are hard pressed, our experience shows such a review will pay off in the long term. In an economic downturn, those organisations which have invested in developing specific technology will likewise be looking to that technology to provide sustained income. Those organisations will be reviewing what rights are included in the licenses they have issued, which entitle them to further revenue and will consider audits to identify whether the licensee should be paying greater fees for the use of that technology.

Be compliant as a user of technology:-

License the software/product

Inspect the terms of the License

Check the duration of the License

Enforce the terms

Notify the staff as to application

Supervise appropriate implementation

Enjoy the product

We are able to assist in reviewing your licenses and advise on how to become compliant.

For more information on this topic please contact [Jane Hardy](#) or [Tahir Basheer](#)

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